

Also, paper to accompany bill for relief of William B. Rowland—to the Committee on Invalid Pensions.

By Mr. GRANGER: Petition of the Hebrew Labor Association, of Providence, R. I., against the immigration bills now pending—to the Committee on Immigration and Naturalization.

By Mr. GRONNA: Petition of Camp Henry W. Lawton, Army of the Philippines, of Grafton, N. Dak., for bill H. R. 1827—to the Committee on Military Affairs.

By Mr. GROSVENOR: Papers in support of bill H. R. 23221—to the Committee on Public Buildings and Grounds.

By Mr. HARDWICK: Petition of E. A. Warwick, secretary of Division No. 180, Order Railway Conductors, of Atlanta, Ga., for bill S. 5133—to the Committee on Interstate and Foreign Commerce.

By Mr. HIGGINS: Petition of the Forestry Commission, for the forest-reservation bill—to the Committee on Agriculture.

Also, petitions of lodges of Hebrew-Americans of New Hampshire and Connecticut, against further restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. HOWELL of New Jersey: Petition of the Board of Trade of Newark, N. J., against amendment in the river and harbor bill to close drawbridges on Passaic and Hackensack rivers—to the Committee on Rivers and Harbors.

By Mr. KENNEDY of Nebraska: Paper to accompany bill for relief of Beatrice H. Duncan—to the Committee on Invalid Pensions.

By Mr. LAFEAN: Papers to accompany bills for relief of Henry R. Klinedinst and Charles Myers (previously referred to the Committee on Claims)—to the Committee on Invalid Pensions.

By Mr. McMORRAN: Petition of citizens of Richmond, Mich., for the Littlefield bill relative to commerce between the States—to the Committee on the Judiciary.

By Mr. McNARY: Petition of the executive council of the Massachusetts State Board of Trade, favoring substitute for bill S. 529 (ship subsidy)—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Society of Arts of Massachusetts Institute of Technology, for a forest reservation in the White Mountains—to the Committee on Agriculture.

Also, petition of the French newspaper publishers of New England, for legislation relative to such postage on foreign papers as shall favor French-American publications—to the Committee on the Post-Office and Post-Roads.

Also, petition of the National German-American Alliance of the United States, against further amendment of the immigration laws—to the Committee on Immigration and Naturalization.

Also, petition of the executive council of the State Board of Trade, for bill H. R. 7053, for postal-note currency—to the Committee on the Post-Office and Post-Roads.

By Mr. MANN: Petition of the Chicago Commercial Association for assignment of the U. S. S. *Montgomery* as a Chicago Naval Reserve ship—to the Committee on Naval Affairs.

Also, petition of the Chicago Medical Society, against bill S. 5221, regulating the practice of osteopathy in the District of Columbia—to the Committee on the District of Columbia.

By Mr. MARTIN: Petition of citizens of South Dakota, for amendment to the free-alcohol law—to the Committee on Ways and Means.

By Mr. MOORE of Pennsylvania: Petition of C. P. Bixler et al., favoring restriction of immigration (S. 4403)—to the Committee on Immigration and Naturalization.

Also, petition of citizens of Philadelphia, Pa., favoring restriction of immigration (S. 4403)—to the Committee on Immigration and Naturalization.

Also, petition of Frank Schoble & Co., for amendment to the free-alcohol law—to the Committee on Ways and Means.

By Mr. NEEDHAM: Petition of fruit growers of California, for modification of the Chinese-exclusion act—to the Committee on Foreign Affairs.

By Mr. PADGETT: Papers to accompany bills for relief of Alexander Mackey, Hindley Patton, and John Brown—to the Committee on War Claims.

By Mr. PATTERSON of South Carolina: Papers to accompany bill for relief of Great Salkehatchie Baptist Church—to the Committee on War Claims.

By Mr. ROBINSON of Arkansas: Paper to accompany bill for relief of B. N. Isaacs—to the Committee on Invalid Pensions.

By Mr. SHEPPARD: Petition of citizens of Little River County, Ark., for an appropriation to improve upper Red River—to the Committee on Rivers and Harbors.

By Mr. SMITH of Arizona: Paper to accompany bill for relief of Hermilius Kendall—to the Committee on Invalid Pensions.

By Mr. SPERRY: Petition of various Jewish lodges and or-

ganizations of New Haven, Conn., against further restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. VAN WINKLE: Petition of the Board of Trade of Newark, N. J., against amendment to the river and harbor bill to close drawbridges on Passaic and Hackensack rivers—to the Committee on Rivers and Harbors.

## SENATE.

THURSDAY, January 31, 1907.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

### YUMA PUMPING AND IRRIGATION COMPANY.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a letter from the Director of the Geological Survey recommending the repeal of the act granting to the Yuma Pumping and Irrigation Company the right of way for two ditches across that part of the Yuma Indian Reservation lying in Arizona, approved January 20, 1893; which, with the accompanying paper, was referred to the Committee on Indian Affairs, and ordered to be printed.

### EFFICIENCY OF THE ARTILLERY.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Treasury, transmitting a letter from the Secretary of War submitting additional estimates of appropriation for the support of the Army for the fiscal year ending June 30, 1908, aggregating \$9,792,057.99, made necessary by reason of the act approved January 25, 1907, to reorganize and increase the efficiency of the artillery of the United States Army; which, with the accompanying papers, was referred to the Committee on Military Affairs, and ordered to be printed.

### REPORT OF CAPITAL TRACTION COMPANY.

The VICE-PRESIDENT laid before the Senate the annual report of the Capital Traction Company, of the District of Columbia, for the year ended December 31, 1906; which was referred to the Committee on the District of Columbia, and ordered to be printed.

### FRENCH SPOILIATION CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the chief justice of the Court of Claims, requesting that, on account of the discovery of new evidence deemed material in certain French spoliation cases, they be recalled from Congress and remanded to the Court of Claims for further action; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

### FINDINGS BY THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact filed by the court in the following causes:

In the cause of Maria L. Rodgers, granddaughter of Andrew K. Long, deceased, *v. The United States*;

In the cause of Marie S. Perrimond, widow of Xavier Perrimond, deceased, *v. The United States*;

In the cause of Christine I. Owen, Kathleen D. Owen, Albert T. Owen, and Alfred C. Owen, children of Alfred M. Owen, deceased, *v. The United States*;

In the cause of Katharine A. Horan, daughter of William Langdon, deceased, *v. The United States*; and

In the cause of the Methodist Episcopal Church at Keyser, W. Va., *v. The United States*.

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims, and ordered to be printed.

### VISITORS TO MILITARY ACADEMY AT WEST POINT.

The VICE-PRESIDENT. The Chair appoints the junior Senator from West Virginia [Mr. SCOTT] and the senior Senator from Georgia [Mr. BACON] members of the Board of Visitors on the part of the Senate to attend the next annual examination of cadets at the Military Academy at West Point, N. Y., under the requirements of section 1327 of the Revised Statutes of the United States.

### CREDENTIALS.

Mr. HOPKINS presented the credentials of SHELBY M. CULLOM, chosen by the legislature of the State of Illinois a Senator

from that State for the term beginning March 4, 1907; which were read, and ordered to be filed.

#### COMMITTEE SERVICE.

Mr. BURKETT was, on his own motion, excused from further service upon the Committee on Indian Depredations.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved*, That Mr. BURKETT be appointed to fill the vacancy in the chairmanship of the Committee on Pacific Railroads.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved*, That Mr. CURTIS be appointed to fill the vacancy in the chairmanship of the Committee on Indian Depredations.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the bill (S. 7760) to authorize the Albany Railroad Bridge Company or the Chicago and Northwestern Railway Company to reconstruct a bridge across the Mississippi River, with amendments; in which it requested the concurrence of the Senate.

The message also announced that the House recedes from its amendment to the bill (S. 7099) granting an increase of pension to Esther A. Cleaveland.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H. R. 21043) granting an increase of pension to Robert J. Dewey.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 19105) granting an increase of pension to William H. Moser.

The message further announced that the House had disagreed to the amendment of the Senate to the bill (H. R. 21579) granting an increase of pension to Sarah R. Harrington; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. LOUDENSLAGER, Mr. DRAPER, and Mr. RICHARDSON of Alabama managers at the conference on the part of the House.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 24538) making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1908; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. COUSINS, Mr. CHARLES B. LANDIS, and Mr. HOWARD managers at the conference on the part of the House.

The message further announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

H. R. 19752. An act for an additional term of court at Quincy, Ill.:

H. R. 24760. An act authorizing the construction of a dam across the Pend d'Oreille River, in the State of Washington, by the Pend d'Oreille Development Company, for the development of water power, electrical power, and for other purposes;

H. R. 24815. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1908; and

H. R. 24821. An act to authorize the Georgia Southwestern and Gulf Railroad Company to construct a bridge across the Chattahoochee River between the States of Alabama and Georgia.

#### ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the Vice-President:

S. 3702. An act for the relief of the Gurley Memorial Presbyterian Church, of the District of Columbia, and for other purposes;

S. 4267. An act to prohibit the sale of intoxicating liquors near the Government Hospital for the Insane and the District almshouse;

S. 5698. An act to regulate the practice of veterinary medicine in the District of Columbia;

S. 6470. An act in relation to the Washington Market Company;

S. 7028. An act for the relief of the Allis-Chalmers Company, of Milwaukee, Wis.;

S. 7147. An act to amend section 2536 of the Revised Statutes, relative to assistant appraisers at the port of New York, and further defining their powers, duties, and compensation;

S. 7170. An act to amend an act relating to service on foreign corporations, approved June 30, 1902, entitled "An act to amend an act entitled 'An act to establish a code of law for the District of Columbia;'"

H. R. 9577. An act for the relief of Charles H. Stockley;

H. R. 24104. An act transferring Phelps County to the eastern division of the eastern judicial district of Missouri; and  
S. R. 86. Joint resolution granting an extension of time to certain homestead entrymen.

#### PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a concurrent resolution of the general assembly of the State of Iowa, relative to the calling of a convention to propose the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a petition of the Association of Cement Users of Ames, Iowa, praying for a continuance of the appropriation to provide for an investigation by the Geological Survey of fuels and structural materials used by the Government; which was referred to the Committee on the Geological Survey.

He also presented a memorial of the Manila Press, of Manila, P. I., remonstrating against the establishment of an agricultural bank in the Philippines; which was referred to the Committee on the Philippines.

Mr. PERKINS presented a petition of sundry citizens of Los Angeles, Cal., praying for the enactment of legislation to limit the effect of the regulation of commerce between the several States and Territories in certain cases; which was referred to the Committee on the Judiciary.

He also presented a petition of the State Board of Trade, of San Francisco, Cal., praying that an appropriation be made for the opening and widening of Oakland Harbor in that State; which was referred to the Committee on Commerce.

He also presented a petition of the State Board of Trade, of San Francisco, Cal., praying that the Government recognize California structural materials in connection with Government work in that State; which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of the executive council of the California Bankers' Association, of San Francisco Cal., praying for the adoption of certain amendments to the interstate commerce law relative to a uniform bill of lading; which was referred to the Committee on Commerce.

Mr. GALLINGER. I present a letter from G. A. Curtice, of Contoocook, N. H., relative to certain inaccurate statements from those advocating the consolidation of pension agencies. I also present resolutions from the headquarters of the Grand Army Association of Philadelphia and vicinity.

I wish to call attention particularly to these resolutions remonstrating against the abolition of the pension agencies of the country, a provision for which will be found in the pension appropriation bill coming from the House.

I merely want to add, Mr. President, that when the existing agencies were established there were upon the rolls 285,697 pensioners, while on June 30, 1906, there were 985,971 pensioners on the rolls. The Grand Army is of opinion that there is no valid reason for abolishing those agencies. I commend the resolutions to the Committee on Pensions, which has jurisdiction of the matter.

The VICE-PRESIDENT. The letter and resolutions will be referred to the Committee on Pensions.

Mr. GALLINGER presented a memorial of the New Hampshire Audubon Society and a memorial of sundry citizens of Franklin, N. H., remonstrating against the enactment of legislation to abolish the Division of Biological Survey in the Department of Agriculture; which were referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Third Maryland Conference of Charities and Correction, of Baltimore, Md., praying that an appropriation be made for a scientific investigation into the industrial conditions of woman and child workers in the United States; which was referred to the Committee on Education and Labor.

He also presented a petition of the Board of Trade of Washington, D. C., praying that a 20 per cent increase be made in the salaries of all employees of the executive and judicial departments of the District of Columbia other than those in classes where salaries have been increased; which was referred to the Committee on Appropriations.

He also presented the petition of Crammond Kennedy, of Washington, D. C., praying that an appropriation be made to pay the claims of D. M. Carman, of Manila, P. I., and of Brooks & Co., of Santiago de Cuba; which was referred to the Committee on Appropriations.

Mr. PLATT presented a petition of sundry citizens of Fort Edward, N. Y., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.



Mr. DEPEW presented petitions of sundry citizens of Hempstead, Wappinger, Lyons Falls, and Erwin, all in the State of New York, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. LONG presented a paper to accompany the bill (S. 7476) granting an increase of pension to Oliver S. Boggs; which was referred to the Committee on Pensions.

He also presented the petition of Jerry M. White, of Kansas, praying for the enactment of legislation for the relief of Joseph V. Cunningham and other officers of the Philippine Volunteers; which was referred to the Committee on Claims.

He also presented a petition of the Civic League and of the Woman's Christian Temperance Union of Winfield, Kans., and a petition of sundry citizens of McPherson, Kans., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. STONE presented a petition of sundry citizens of Bowling Green, Mo., and a petition of sundry citizens of St. Louis, Mo., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented a memorial of Missouri Lodge, No. 22, Independent Order of B'nai B'rith, of St. Louis, Mo., remonstrating against the enactment of legislation to further restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of Typographical Union No. 8, American Federation of Labor, of St. Louis, Mo., praying for the enactment of legislation providing for judicial proceedings to determine the right of publications to subsidized rates of postage; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Woman's Club of New Franklin, Mo., praying for the enactment of legislation providing for the establishment of a child-labor bureau in the Department of the Interior; which was referred to the Committee on Education and Labor.

He also presented a petition of the Commercial Club of Jefferson City, Mo., praying that an appropriation be made for the construction of a 14-foot deep waterway from Chicago, Ill., to the Gulf of Mexico; which was referred to the Committee on Commerce.

Mr. CLARK of Montana presented a petition of sundry citizens of Missoula, Mont., praying for an investigation into the existing conditions in the Kongo Free State; which was referred to the Committee on Foreign Relations.

He also presented a memorial of sundry citizens of Montana, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

Mr. CULBERSON presented a petition of sundry citizens of Ennis, Tex., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. FULTON presented petitions of sundry citizens of Roseburg and Saline, in the State of Oregon, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. SCOTT presented a petition of sundry citizens of Ravenswood, W. Va., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. FRAZIER presented a petition of sundry citizens of Lincoln County, Tenn., and a petition of sundry citizens of Lawrenceburg, Tenn., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. KEAN presented the petition of Florence Spencer Hunt, executrix of the estate of the late Mordecai Hunt, of Chester, N. J., praying that she be granted certain relief on account of unlawfully collected legacy taxes; which was referred to the Committee on Finance.

He also presented a petition of the Woman's Christian Temperance Union of Haddonfield, N. J., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. HEMENWAY presented a petition of Oliver Short Post, No. 390, Grand Army of the Republic, of Rossville, Ind., praying for the enactment of legislation to pension all honorably discharged soldiers of the war of the rebellion at the rate of \$30 per month; which was referred to the Committee on Pensions.

Mr. MONEY presented a petition of sundry citizens of Tupelo, Miss., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. FRYE presented a petition of sundry citizens of Corinth, Me., and a petition of sundry citizens of Fort Fairfield, Me., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. CULLOM presented a petition of the farmers' institute of Carroll County, Ill., praying for the passage of the so-called "parcels-post bill;" which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of sundry citizens of Christian County, Ill., praying for the enactment of legislation providing for a national reciprocal demurrage law penalizing railroads for wantonly neglecting to perform their duties as common carriers of freight; which was referred to the Committee on Interstate Commerce.

Mr. CULLOM. I present the petition of Bessie Josephine Lynch, praying that emolument be paid the children of John A. Lynch, late a citizen of the United States, for valuable services rendered by him as the projector and promoter of the International American Conference and the Intercontinental Railway in the interest of closer commercial and friendly relations between the United States and Mexico and the several Republics of Central and South America and the Empire of Brazil. I move that the petition be printed as a document and referred to the Committee on Railroads.

The motion was agreed to.

Mr. BULKELEY presented a memorial of Maier Zinder Lodge, No. 572, Independent Order of B'nai B'rith, of New Haven, Conn., remonstrating against the enactment of legislation to further restrict immigration; which was referred to the Committee on Immigration.

Mr. CARMACK presented the petition of Frank Maloney, of the State of Tennessee, praying for the enactment of legislation for the relief of Joseph V. Cunningham and other officers of the Philippine Volunteers; which was referred to the Committee on Claims.

He also presented petitions of sundry citizens of Hollow Rock, Savannah, and Sparta, all in the State of Tennessee, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. CLAPP presented sundry petitions of citizens of Preston, Minn., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented a petition of the Absentee Shawnee Indians, praying for a settlement of their claim to a certain tract of land in Missouri known as the "Carondelet grant" or the "Cape Girardeau Reserve;" which was referred to the Committee on Indian Affairs.

He also (for Mr. GAMBLE) presented the petition of Adolph Prensler and sundry other citizens of White, S. Dak., praying for the adoption of a certain amendment to the present denatured-alcohol law; which was referred to the Committee on Finance.

#### REPORTS OF COMMITTEES.

Mr. KEAN, from the Committee on Claims, to whom was referred the bill (H. R. 7153) for the relief of David McClelland, for loss sustained at Chickamauga Park, Georgia, January 29, 1904, reported it without amendment, and submitted a report thereon.

Mr. ALLEE, from the Committee on Railroads, to whom was referred the bill (S. 3592) permitting the St. Louis, San Francisco and New Orleans Railroad Company (formerly the Arkansas and Choctaw Railway Company), the St. Louis and Oklahoma City Railroad Company, the St. Louis, Oklahoma and Southern Railway Company, and the Oklahoma City and Western Railroad Company, and each or either of them, to sell and convey their railroads and other property in the Indian Territory to the St. Louis and San Francisco Railroad Company, and for other purposes, asked to be discharged from its further consideration, and that it be referred to the Committee on Indian Affairs; which was agreed to.

Mr. SCOTT, from the Committee on Military Affairs, to whom was referred the bill (S. 7921) for the relief of George A. Armstrong, reported it without amendment.

He also, from the same committee, to whom was referred the amendment submitted by Mr. BURKETT on the 15th instant, proposing to appropriate \$140,000 for the acquisition of about 16,000 acres of land adjacent to the military reservation of Fort Robinson, Nebr., intended to be proposed to the sundry civil appro-

priation bill, reported it with an amendment, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. SCOTT, from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 5456) granting an increase of pension to Marcellus C. Cash;

A bill (S. 7862) granting an increase of pension to Elias Loughner; and

A bill (S. 7871) granting a pension to Catharine C. Hayes.

Mr. SCOTT, from the Committee on Pensions, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (S. 2729) granting an increase of pension to Robert J. Henry;

A bill (S. 7222) granting an increase of pension to Sylvester Byrne; and

A bill (S. 4028) granting an increase of pension to Ann H. Barnes.

Mr. HEMENWAY, from the Committee on Military Affairs, to whom was referred the bill (S. 7188) to remove the charge of desertion from the military record of Martin All, reported it with an amendment.

Mr. BURROWS, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (H. R. 5169) for the relief of W. B. Sutter, reported it without amendment, and submitted a report thereon.

He also, from the Committee on Finance, to whom was referred the bill (H. R. 5167) for the relief of William H. Stiner & Sons, reported it without amendment.

Mr. FULTON, from the Committee on Claims, to whom was referred the bill (H. R. 15594) for the relief of John B. Brown, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 3577) for the relief of Barclay H. Warburton;

A bill (H. R. 5195) for the relief of the Milburn Wagon Company, of Toledo, Ohio;

A bill (H. R. 8078) for the relief of Miss Bernice Farrell;

A bill (H. R. 12009) for the relief of the heirs at law of M. A. Phelps and the heirs at law of John W. Renner;

A bill (H. R. 20168) for the relief of F. Kraut, of Leon Springs, Tex.;

A bill (H. R. 6430) authorizing the Secretary of the Treasury to pay to German M. Rouse informer's fees for certain opium seizures;

A bill (H. R. 4300) for the relief of A. J. Stinson;

A bill (H. R. 4299) for the relief of John Stinson;

A bill (H. R. 19493) to reimburse Oscar Fulgham, ex-sheriff of Madison County, Ala., for judgment and costs rendered against him when acting in the service of the United States;

A bill (H. R. 7746) for the relief of Columbia Hospital and Dr. A. E. Booser;

A bill (H. R. 8365) for the relief of C. A. Berry;

A bill (H. R. 11676) for the relief of persons who sustained property damage caused by fire at the Rock Island Arsenal;

A bill (H. R. 1078) for the relief of Hamilton D. South, second lieutenant, United States Marine Corps;

A bill (H. R. 15909) to reward the widow and minor son of Capt. Charles W. Dakin and the widow and minor children of Thomas J. Hennessy, late of the San Francisco fire department, who lost their lives while fighting a fire on board of the United States Army transport *Meade*;

A bill (H. R. 18865) for the relief of John and David West;

A bill (H. R. 9778) for the relief of Philip Loney; and

A bill (H. R. 3268) for the relief of Henry O. Bassett, heir of Henry Opeman Bassett, deceased.

Mr. PILES, from the Committee on Pensions, to whom was referred the bill (H. R. 21529) granting a pension to Charlotte Game, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 21347) granting an increase of pension to Jeanette M. Guiney;

A bill (H. R. 21543) granting an increase of pension to Addison Thompson;

A bill (H. R. 21524) granting an increase of pension to Elison Gatewood;

A bill (H. R. 21499) granting an increase of pension to Henry A. Weiland;

A bill (H. R. 21496) granting an increase of pension to Samuel B. Davis;

A bill (H. R. 21470) granting an increase of pension to Mary Rebecca Carroll;

A bill (H. R. 21354) granting a pension to Mary Shutler;

A bill (H. R. 21343) granting an increase of pension to James C. Murray;

A bill (H. R. 21335) granting an increase of pension to Harvey S. Nettleton;

A bill (H. R. 21332) granting an increase of pension to John R. Smith;

A bill (H. R. 21331) granting an increase of pension to Robert O. Bradley;

A bill (H. R. 21325) granting an increase of pension to George O. Tibbitts;

A bill (H. R. 21322) granting an increase of pension to Elizabeth Wilson;

A bill (H. R. 21320) granting an increase of pension to Ma-linda H. Hitchcock;

A bill (H. R. 20215) granting an increase of pension to Riley J. Berkley;

A bill (H. R. 21612) granting an increase of pension to James S. Hart;

A bill (H. R. 21606) granting an increase of pension to Felix G. Morrison;

A bill (H. R. 21603) granting an increase of pension to Calvin S. Mullins;

A bill (H. R. 21564) granting an increase of pension to Daniel French;

A bill (H. R. 21551) granting an increase of pension to Alfred E. Lucas;

A bill (H. R. 21542) granting an increase of pension to Erastus A. Thomas;

A bill (H. R. 21535) granting an increase of pension to William E. Feeley;

A bill (H. R. 21534) granting an increase of pension to Henry Reed;

A bill (H. R. 21532) granting an increase of pension to William Dobson;

A bill (H. R. 21497) granting an increase of pension to Mary E. Hobbs;

A bill (H. R. 21483) granting an increase of pension to George S. Woods;

A bill (H. R. 21481) granting an increase of pension to Lucy Cole;

A bill (H. R. 21472) granting an increase of pension to Wiley H. Jackson;

A bill (H. R. 21471) granting an increase of pension to Adeline H. Malone;

A bill (H. R. 21448) granting an increase of pension to Jesse Jackman;

A bill (H. R. 21446) granting an increase of pension to William A. Crum;

A bill (H. R. 21432) granting an increase of pension to Benjamin Bragg;

A bill (H. R. 21428) granting an increase of pension to Cornelius H. Lawrence;

A bill (H. R. 21427) granting an increase of pension to Thomas L. Moody;

A bill (H. R. 21376) granting an increase of pension to John W. Stichter;

A bill (H. R. 21375) granting an increase of pension to John S. Cornwell; and

A bill (H. R. 21335) granting an increase of pension to John Cooper.

Mr. HOPKINS, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 7143) directing the Postmaster-General to credit John A. Bingham, late postmaster at Vandalia, Ill., in the sum of \$500 on account of stamps lost by burglary, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 7922) to reimburse Anna B. Moore, postmaster at Rhyolite, Nev., for money expended for clerical assistance, reported it with an amendment, and submitted a report thereon.

Mr. SMOOT, from the Committee on Claims, to whom was referred the bill (S. 1181) to provide for the payment of over-time claims of letter carriers excluded from judgment as barred by limitation, reported it without amendment, and submitted a report thereon.

Mr. BURKETT, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 21122) granting an increase of pension to Nathan Small;



A bill (H. R. 21113) granting an increase of pension to Emma M. Chamberlin;  
 A bill (H. R. 21079) granting an increase of pension to Patrick Kinney;  
 A bill (H. R. 21078) granting an increase of pension to Henry C. Davis;  
 A bill (H. R. 21077) granting an increase of pension to Andrew M. Dunn;  
 A bill (H. R. 21061) granting an increase of pension to James Collins;  
 A bill (H. R. 21060) granting an increase of pension to Gottlieb Kirchner;  
 A bill (H. R. 21047) granting an increase of pension to Jesse J. Melton;  
 A bill (H. R. 21046) granting a pension to Jesse Harral;  
 A bill (H. R. 21002) granting an increase of pension to William Wiggins;  
 A bill (H. R. 21000) granting an increase of pension to Mary Evans;  
 A bill (H. R. 21277) granting an increase of pension to Robert Martin;  
 A bill (H. R. 21274) granting an increase of pension to Jeremiah Buffington;  
 A bill (H. R. 21270) granting an increase of pension to Ellen Sullivan;  
 A bill (H. R. 21264) granting an increase of pension to David J. Wise;  
 A bill (H. R. 21258) granting an increase of pension to James Dopp;  
 A bill (H. R. 21256) granting an increase of pension to William Foster;  
 A bill (H. R. 21255) granting an increase of pension to Thomas McDowell;  
 A bill (H. R. 21227) granting an increase of pension to Parthena Lasley;  
 A bill (H. R. 21161) granting an increase of pension to Henry J. Rhodes;  
 A bill (H. R. 21157) granting an increase of pension to George C. Peak;  
 A bill (H. R. 21123) granting an increase of pension to Lawrence McHugh;  
 A bill (H. R. 21303) granting an increase of pension to James Edward Bristol;  
 A bill (H. R. 21283) granting an increase of pension to Frederick De Planque;  
 A bill (H. R. 21281) granting an increase of pension to Catharine Ludwig;  
 A bill (H. R. 21280) granting an increase of pension to Isaac Cain; and  
 A bill (H. R. 21279) granting an increase of pension to Martin Heller.  
 Mr. LA FOLLETTE, from the Committee on Pensions, to whom was referred the bill (H. R. 21808) granting an increase of pension to Levi Mitchell, reported it with an amendment, and submitted a report thereon.  
 He also, from the same committee, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:  
 A bill (H. R. 21906) granting an increase of pension to John M. Bruder;  
 A bill (H. R. 21896) granting an increase of pension to George H. Field;  
 A bill (H. R. 21888) granting an increase of pension to Andrew Canova;  
 A bill (H. R. 21887) granting an increase of pension to James H. Hayman;  
 A bill (H. R. 21886) granting an increase of pension to John Bryant;  
 A bill (H. R. 21882) granting an increase of pension to Frank Breazeale;  
 A bill (H. R. 21852) granting an increase of pension to James M. Eaman;  
 A bill (H. R. 21843) granting an increase of pension to Robert H. Delaney;  
 A bill (H. R. 21836) granting an increase of pension to Mary C. Hall;  
 A bill (H. R. 21837) granting an increase of pension to James W. Kasson;  
 A bill (H. R. 21819) granting an increase of pension to Joseph Peach;  
 A bill (H. R. 21761) granting an increase of pension to John Tims;  
 A bill (H. R. 21724) granting an increase of pension to John D. Martin;

A bill (H. R. 21667) granting an increase of pension to John W. Towle;  
 A bill (H. R. 21651) granting an increase of pension to Jacob B. Butts;  
 A bill (H. R. 21648) granting an increase of pension to Michael Gaus;  
 A bill (H. R. 21644) granting an increase of pension to Sheldon Hess;  
 A bill (H. R. 21636) granting an increase of pension to Elias Miller;  
 A bill (H. R. 21634) granting an increase of pension to Emma Sickler;  
 A bill (H. R. 21881) granting an increase of pension to Mahala M. Jones;  
 A bill (H. R. 21856) granting an increase of pension to John G. Viall;  
 A bill (H. R. 21848) granting an increase of pension to Charles W. Arthur;  
 A bill (H. R. 21798) granting an increase of pension to Andrew Spencer;  
 A bill (H. R. 21767) granting an increase of pension to George Young;  
 A bill (H. R. 21630) granting an increase of pension to John F. Yeargin;  
 A bill (H. R. 21626) granting an increase of pension to Calvin Barker;  
 A bill (H. R. 21624) granting an increase of pension to William H. Willey;  
 A bill (H. R. 21617) granting an increase of pension to William Miller; and  
 A bill (H. R. 21615) granting an increase of pension to David Yoder.

ROBERT D. BENEDICT.

Mr. KEAN. I am instructed by the Committee on Claims, to whom was referred the bill (H. R. 1443) for the payment of Robert D. Benedict for services rendered, to report it favorably without amendment, and I ask for its present consideration. The bill is very short, and it involves only \$250.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay to Robert D. Benedict, of the Borough of Brooklyn, N. Y., \$250 in full payment and discharge of the claim of said Robert D. Benedict, for legal services rendered by him in a legal proceeding taken by the clerk of the district court of the United States for the southern district of New York, for an injunction to prevent the clerk from being deprived of the necessary accommodations for the records of the court.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. KEAN. I move that the bill (S. 2385) for the payment of Robert D. Benedict for services rendered, which is now on the Calendar and which is the same bill exactly, be indefinitely postponed.

The motion was agreed to.

J. J. L. PEEL.

Mr. FULTON. I am directed by the Committee on Claims, to whom was referred the bill (H. R. 1808) for the relief of J. J. L. Peel, to report it favorably without amendment, and I submit a report thereon. I ask unanimous consent for the present consideration of the bill.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay to J. J. L. Peel, of Spokane, Wash., \$1,041.76, being the amount advanced by him for necessary clerk hire and expenses while acting as postmaster at Spokane, Wash.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

STURGEON BAY, ILLINOIS.

Mr. HOPKINS. I am directed by the Committee on Commerce, to whom was referred the joint resolution (H. J. Res. 207) declaring Sturgeon Bay, Illinois, not navigable water, to report it favorably without amendment, and I ask unanimous consent for its present consideration.

The Secretary read the joint resolution; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. CULLOM introduced a bill (S. 8244) to pay to the legal heirs of the late John A. Lynch for valuable services rendered

by him as the projector and promoter of the International American Conference and the Intercontinental Railway; which was read twice by its title, and referred to the Committee on Railroads.

He also introduced a bill (S. 8245) granting an increase of pension to Gilbert J. George; which was read twice by its title, and referred to the Committee on Pensions.

Mr. McCUMBER introduced a bill (S. 8246) for the relief of John H. Lohman; which was read twice by its title, and referred to the Committee on Claims.

Mr. PLATT introduced a bill (S. 8247) granting a pension to Harvey McKinney; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 8248) to amend section 2731 of the Revised Statutes, relative to salary of assistant appraisers at the port of New York; which was read twice by its title, and referred to the Committee on Finance.

Mr. GALLINGER introduced a bill (S. 8249) to authorize the towns of Takoma, Md., and Chevy Chase, Md., to connect their water systems with the water system of the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. BURROWS introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Commerce:

A bill (S. 8250) for the establishment of a light-house and fog-signal station at White Shoals, in the Straits of Mackinac, State of Michigan;

A bill (S. 8251) for the establishment of a light-house and fog-signal station at the easterly end of Gull Island, Apostle Group, westerly end of Lake Superior, Wisconsin; and

A bill (S. 8252) to construct and place a light-ship at the easterly end of the southeast shoal near North Manitou Island, Lake Michigan.

Mr. BURROWS introduced a bill (S. 8253) granting an increase of pension to Noah Boothby; which was read twice by its title, and referred to the Committee on Pensions.

Mr. McENERY introduced a bill (S. 8254) for the relief of the estate of Isaac Bloom, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. OVERMAN introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 8255) to carry out the findings of the Court of Claims in the case of Edward J. Gallagher, administrator of Charles Gallagher, deceased; and

A bill (S. 8256) for the relief of the heirs of Charles H. Foy, deceased (with an accompanying paper).

Mr. CULBERSON. There is quite a demand for copies of Senate bill 7887, introduced by me on the 16th instant, in reference to the shortage of cars engaged in interstate commerce. There are besides some verbal inaccuracies in the printed bill. I therefore reintroduce the bill with the corrections suggested and ask that it be referred to the Committee on Interstate Commerce.

The bill (S. 8257) to require railroad companies engaged in interstate commerce to promptly furnish cars and other transportation facilities, and to empower the Interstate Commerce Commission to make rules and regulations with respect thereto, and to further regulate commerce among the several States, was read twice by its title, and referred to the Committee on Interstate Commerce.

Mr. FULTON introduced a bill (S. 8258) granting a pension to Mary B. Yerington; which was read twice by its title, and referred to the Committee on Pensions.

Mr. HOPKINS introduced a bill (S. 8259) granting an increase of pension to Henry B. Love; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. KNOX introduced a bill (S. 8260) granting an increase of pension to Mary B. Siviter; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 8261) for the relief of Christopher Alexander and others; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. DU PONT introduced a bill (S. 8262) authorizing the appointment of Lieut. Col. Harry G. Cavanaugh, United States Army, retired, on the retired list of the Army with the rank of brigadier-general; which was read twice by its title, and referred to the Committee on Military Affairs.

#### AMENDMENTS TO APPROPRIATION BILLS.

Mr. CURTIS submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which

was referred to the Committee on Commerce, and ordered to be printed.

Mr. FOSTER submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. GALLINGER submitted an amendment proposing to appropriate \$200 for preparing an index to the report of the French-Venezuelan Claims Commission, intended to be proposed by him to the general deficiency bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. BULKELEY submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. OVERMAN submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. PETTUS submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. MALLORY submitted three amendments intended to be proposed by him to the river and harbor appropriation bill; which were referred to the Committee on Commerce, and ordered to be printed.

Mr. PERKINS submitted an amendment proposing to appropriate \$1,000 for the removal of office building No. 103 from its present location to the hill in the rear of building No. 65, navy-yard, Mare Island, Cal., intended to be proposed by him to the naval appropriation bill; which was referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. DICK submitted an amendment proposing to appropriate \$4,000 for marking the places where American soldiers fell and were temporarily interred in Cuba and China, intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

Mr. KNOX submitted an amendment proposing to appropriate \$3,000 to pay John M. McDowell, of Council City, Alaska, for services rendered in preparing indices of all the records of Council City recording district of the second judicial district of Alaska, intended to be proposed by him to the sundry civil appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on the Judiciary.

Mr. McCUMBER submitted an amendment proposing to appropriate \$4,405 out of the sum allowed to the Eastern Cherokee Indians under the judgment of the Supreme Court, October term, 1905, to those individuals and councilors entitled to the same under resolutions of April 29, 1904, and May 11, 1906, of the permanent council of the Eastern Cherokees, etc., intended to be proposed by him to the Indian appropriation bill; which was ordered to lie on the table and be printed.

Mr. CULBERSON submitted an amendment proposing to make immediately available \$40,000 of the appropriation of \$150,000 for the investigation of the cotton boll weevil, etc., intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

Mr. LODGE submitted an amendment providing that officers who now hold the rank of brigadier-general on the active list of the Army, having previously held that rank for three years or more, shall, when retired from active service, have the rank and pay of major-general, intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

#### INTERSTATE COMMERCE ACT AND AMENDMENTS.

Mr. LA FOLLETTE. The Bureau of Corporations of the Department of Commerce and Labor has prepared and had printed a document reproducing the old interstate-commerce act and the changes made therein by the act of June 29, 1906. The copies of that document have been exhausted, and as it is the best I have seen on the subject, showing as it does in parallel columns the changes made in the old law by the new law, I ask that it may be printed as a public document.

The VICE-PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

#### ESTATE OF MARCUS P. NORTON.

Mr. PLATT submitted the following resolution; which was referred to the Committee on Claims:

*Resolved*, That the bill (S. 8066) entitled "A bill referring to the Court of Claims for adjudication and determination the claims of the widow and family of Marcus P. Norton and the heirs at law of



others," a bill for the relief of George C. Lewis as one of the claimants under the patents of the said Norton and as agent for the said widow and family of the said Norton and the said heirs at law of others, now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887; and the said court shall proceed with the same in accordance with the provisions of such act and report to the Senate their findings of fact and law.

LORENZO F. HARMON.

Mr. McCUMBER submitted the following concurrent resolution; which was considered by unanimous consent, and agreed to.

*Resolved by the Senate (the House of Representatives concurring), That the President be requested to return the bill (S. 1879) entitled "An act granting an increase of pension to Lorenzo F. Harmon."*

#### HOUSE BILLS REFERRED.

H. R. 19752. An act for an additional term of court at Quincy, Ill., was read twice by its title, and referred to the Committee on the Judiciary.

The following bills were severally read twice by their titles, and referred to the Committee on Commerce:

H. R. 24760. An act authorizing the construction of a dam across the Pend d'Oreille River, in the State of Washington, by the Pend d'Oreille Development Company, for the development of water power, electrical power, and for other purposes; and

H. R. 24821. An act to authorize the Georgia Southwestern and Gulf Railroad Company to construct a bridge across the Chattahoochee River between the States of Alabama and Georgia;

H. R. 24815. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1908, was read twice by its title, and referred to the Committee on Agriculture and Forestry.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. M. C. LATTA, one of his secretaries, announced that the President had approved and signed the following acts:

On January 29:

S. 5469. An act to authorize the Secretary of Commerce and Labor to investigate and report upon the industrial, social, moral, educational, and physical condition of woman and child workers in the United States; and

S. 5500. An act for the relief of Matthew J. Davis.

On January 30:

S. 1894. An act for the relief of P. S. Corbett; and

S. 1231. An act to reimburse the Becker Brewing and Malting Company, of Ogden, Utah, for loss resulting from robbery of the United States mails.

SARAH A. CLAPP.

Mr. CULLOM. I ask leave to call up the bill (H. R. 1738) for the relief of Sarah A. Clapp.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay to Sarah A. Clapp, formerly Sarah A. Chadwick, the pay and allowances of a surgeon of volunteer cavalry from the 15th day of November, 1861, to December 27, 1861, and the pay and allowances of an assistant surgeon of cavalry from December 27, 1861, to the 25th day of August, 1862, she having served as such surgeon and assistant surgeon for the time mentioned, respectively, in the Seventh Regiment of Illinois Volunteer Cavalry, under her maiden name of Sarah A. Chadwick.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

NYE & SCHNEIDER COMPANY.

Mr. MILLARD. I ask unanimous consent for the consideration of the bill (H. R. 10595) for the relief of Nye & Schneider Company.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay the sum of \$61.13 to Nye & Schneider Company, of Fremont, Nebr., being an unpaid balance on bill rendered for fuel furnished the United States Government by that company during the years 1893 and 1894 for the purpose of heating the post-office building at Hastings, Nebr.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

ALFRED BURGESS.

Mr. PLATT. I ask unanimous consent for the consideration of the bill (S. 7163) to correct the naval record of Alfred Burgess.

Mr. TILLMAN. Mr. President, I dislike very much to in-

terfere with the convenience of Senators. I myself have some bills which I should like to have passed; but the Senator from Maryland [Mr. RAYNER] has given notice that he wants to speak at the end of the routine morning business. He is limited in time, because he has got to get through before 2 o'clock; and while he may not take that time, I feel compelled to object to the consideration of any bill until he gets through.

The VICE-PRESIDENT. Objection is made to the request of the Senator from New York.

#### EXECUTIVE FUNCTIONS AND RESERVED STATE RIGHTS.

Mr. RAYNER. Mr. President, I call up resolution No. 199, which was submitted by me on the 17th of last month, and ask to have read as a substitute for the original resolution the resolution which I now send to the desk.

The VICE-PRESIDENT. The substitute resolution submitted by the Senator from Maryland will be read.

The Secretary read as follows:

*Resolved, That in the opinion of the Senate the functions of the Executive should be limited to the performance of the duties assigned to him by the Constitution and by the laws passed in pursuance thereof, and there should be no interference by the Executive with the legislative or judicial departments of the Government, and the legislative, judicial, and executive departments of the Government should be forever kept separate and distinct: And resolved further, That if additional constitutional powers are necessary to carry on the purposes of the General Government, they must be procured by amendments to the Constitution and not by a strained construction of the delegated powers so as to invade the reserved rights of the States.*

Mr. RAYNER. Mr. President, some weeks ago a member of the Cabinet, a lawyer of great attainments and profound learning, in an address delivered by him, and that has been given wide circulation in the public press, gave utterance to the following sentiment:

It is useless for the advocates of States' rights to inveigh against the supremacy of the constitutional laws of the United States or against the extension of national authority in the fields of necessary control where the States themselves fail in the performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to respect anyone's right to exercise a power which he fails to exercise. The governmental control which they deem just and necessary they will have. It may be that such control would better be exercised in particular instances by the governments of the States, but the people will have the control they need, either from the States or from the National Government, and if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised in the National Government.

About a week after this address had been delivered and sufficient time for further reflection had elapsed, the distinguished Secretary of State, in answer to comments and criticisms that had been passed upon his remarks, publicly announced that he had no intention of changing a word or an idea that he had expressed upon this occasion.

#### A DANGEROUS DOCTRINE OF CONSTITUTIONAL CONSTRUCTION.

Speaking now with the utmost deference and respect, and with great admiration for the services that he has rendered in the various public positions which he has occupied and that he has so highly honored, I regard this doctrine thus announced, adhered to, and emphasized as a most dangerous and insidious attack upon the institutions of the country. I would not attach so much practical importance to the address if it were not for the fact that the propositions advanced are being constantly illustrated in the administration of our Government, and therefore they can not be regarded simply as the expression of a sentiment or a theory, but must be taken as they were intended to be taken, as manifesting the purpose of the present Administration to carry this new doctrine of constitutional construction into execution whenever the opportunity or emergency may arise for its exercise.

Let us therefore analyze it and be prepared to meet it as a substantive issue which, for the novelty of its conception, and the unmasked boldness of its pretensions, is without a precedent, and I hope without a following among men of either party who have any desire whatsoever to maintain the autonomy of the States or the inviolable character of our Federal institutions. The sum and substance of this revolutionary idea is this: There are certain powers which the Federal Government can not exercise and which nevertheless may be considered necessary for the welfare of the Union. The States, either separately or by concurrent action, could come to the rescue of the Constitution and enact legislation that would afford full and adequate relief for the want of power in the Federal Government, repeating now the identical language that was used—"the people will have the control they need, either from the States or from the National Government, and if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised in the National Government." That is to say, that this Government is a government of delegated and

enumerated powers, and beyond these powers entire and absolute sovereignty rests with the States. The delegated powers are not sufficient to cover the field of national necessity. The States must not permit their powers to lie dormant; they must supply the deficiency, and if they fail to do this then the legislative, executive, and judicial branches of the Government will supplement the Constitution and so construe and adapt the delegated powers that they will carry with them the dormant powers of the States that they have failed to put into practical operation.

If such a doctrine as this had obtained in the constitutional convention the Constitution would never have been ratified and we would never have had a Constitution of the United States. And if either Congress or the President or the Supreme Court is to undertake this construction now and assume this unlawful prerogative, then it would become absolutely necessary for us to resolve ourselves into a government of inherent power, with unlimited jurisdiction, and with the reserved rights of the States obliterated and extinguished.

#### THE RESERVED RIGHTS OF THE STATES.

I shall not enter into an academic discussion upon the reserved rights of the States and the imperishable distinction between these rights and the delegated powers of the Constitution. An incessant flood of political literature—volumes upon volumes, adjudications ranging over a century—and the common consent of the American people have settled the question that we can not and we dare not do what is foreshadowed in this address without subverting the foundation upon which this Republic stands. It would be a perfect waste of time for me to roam over the field of judicial history and present to any intelligent assemblage the cardinal distinctions of the Constitution between delegated and reserved powers. The monotony of such an argument would warn me to desist from pursuing it, and its universal acceptance covered and closed forever by the decisions of the Supreme Court admonishes me that the Senate of the United States desires no presentation upon that subject. What we now want is to meet the menace and the threat that the States shall gradually lose their reserved rights, not because they do not exist, but because such a construction shall be placed upon the enumerated powers of the Federal Government that the local laws and customs and usages of the States—that their constitutions and their statutes, that the will of their people as expressed in their conventions and legislative assemblages, that their dormant and unexercised powers, that their failure to provide for the welfare of other States and for the general welfare of the Union—must all give way to this new rule of interpretation and construction which declares that whenever there is a proposition that in the opinion of the ruling powers tends to promote the general welfare of the Union, the actual Federal powers shall be enlarged and strained to such an extent that this Government shall no longer be a government of delegated powers, but shall resolve itself into a centralized despotism without any limitation upon its activities, without any inhibition upon its authority, and without any boundary to its jurisdiction.

#### THE CONSTITUTION DOES NOT CHANGE WITH CIRCUMSTANCES.

Let it not be supposed for a moment that I am opposed to the most complete execution of all Federal powers vested in the Government under the Constitution. I believe, whenever the emergency arises, in the exhaustion of Federal power for the purpose of meeting it, and the Supreme Court of the United States has never hesitated to ratify the doctrine first proclaimed by Marshall in *McCulloch v. Maryland*:

Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end; which are not prohibited, but consist with the spirit and letter of the Constitution, are constitutional.

When we come to collect taxes, to regulate commerce, to coin money, to restrain the carriers of commerce from extortion and discrimination, to prevent unlawful combinations of centralized wealth from plundering the people, and to exercise every power vested in this Government, I say, as the Supreme Court in unnumbered decisions has declared, that these powers must keep pace with the development of the country, and as it progresses and advances, the subject upon which these powers can operate expands and enlarges so that to-day admittedly the field of their operations has passed beyond contemporaneous construction and covers a territory and a multiplicity of cases that were not and could not have been within the contemplation of the men who framed the Constitution; and every thought that the Secretary has uttered upon this branch of the subject meets with my ready consent, and I proceed with him to the utmost limits of his contention. This is not the point at all upon which we divide. We divide upon the point that you can interpolate into the Constitution new powers upon the plea of governmental necessity. I may admit that a uniform divorce law,

referred to by the Secretary, would be highly beneficial to society, but I deny that there is any possible method by which we can work it into the Constitution, and when he refers to a uniform insurance law I may admit that such a plan would be entitled to our serious consideration, but I respectfully challenge him to point me to the clause in the instrument that can be construed to cover such a grant.

Let me ask in this connection what about the law that would embrace the right of suffrage? There is the practical danger that confronts us. There is an illustration that comes right within this new canon of construction. Each State has its own statutes regulating the suffrages of its citizens, and without infringing upon the amendments, a number of them have provided for an educational test and property qualifications. In this regard a State is not controlled by what other States may require, nor does the welfare of the Union at all enter into its consideration. It is entirely a question of its own welfare and its own environment and its own safety and its own moral and material progress. I do not for a moment contend that the Secretary would deprive the States of this right, but under his new plan of constitutional construction it would be a simple process to accomplish this result. Does it make any difference that in the case of *Minor v. Happersett*, in 21 Wallace, the Supreme Court has declared that the Constitution of the United States does not confer the right of suffrage upon anyone, and that in a subsequent case, that of *The United States v. Cruikshank*, in 92 U. S., the Supreme Court, affirming the earlier case, has again declared that the right to vote in the States comes from the States, and that only the right of exemption from the prohibitive discrimination comes from the United States. The House of Representatives to-day, adopting this new rule of constitutional construction, can practically repeal these decisions and decline to admit any member into its body from any Southern State that limits its suffrages to the intelligence of its citizens, upon the plea of governmental—or to be more accurate—of party necessity. Thus one by one the reserved rights of the States would fall and away would go the decisions of a century.

In *Texas v. White*, in 7 Wallace, the Chief Justice declared that the "maintenance of the government of the States is as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government."

In *Ex parte Milligan*, in 4 Wallace, the Supreme Court rang this clarion note:

The Constitution never yields to treaty or enactment; it neither changes with time nor does it in theory bend to the force of circumstances; its principles can not be set aside to meet the supposed necessities of great crises; no doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of the Government.

All our judicial history rings with one accord upon this theme from the time that Madison declared that the jurisdiction of this Government extends to certain enumerated objects, and leaves to the several States a residuary and inviolable sovereignty over all other objects, and Hamilton declared that all authority of which the States are not explicitly divested in favor of the Union remains with them down to the day when the Supreme Court proclaimed that the Constitution, in all of its provisions, looks to an indestructible union composed of indestructible States.

This new dispensation, therefore, is at utter war with judicial opinion. It makes a mockery of the unbroken line of adjudications upon the subject. It turns the Constitution into a rhapsody of words; and if the heresy is ever to be accepted by the coming generations, we might as well apply the flames to that great edifice of constitutional thought that it has taken over a century to erect, and level it to the earth in all the symmetry of its proportions.

#### THE PRESIDENT OF THE UNITED STATES.

As I said at the beginning, however, Mr. President, I would not have arisen here to-day at all if it were not for the fact that this doctrine of constitutional perversion is being put into practical operation constantly by those for whom the Secretary is speaking, and whose purpose and design he is so clearly upholding and fortifying, and this brings me to the other branch of the resolution.

I would like it understood that I do not intend in anything I may now say to assail the President of the United States. It is my determined purpose not to do so, and I shall extremely regret it if I deviate therefrom. I esteem him too highly in a great many respects, individually and officially, to be influenced in the slightest degree by personal motives, and I propose to treat him with the courtesy and dignity that my position calls for and that his station entitles him to. Those who know me best know that I am not a partisan in politics, and even if the occasion



were present, and fully justified it, I should not make use of this place for the purpose of creating political capital or fomenting party rancor out of any of the facts with which I am about to deal.

I have a great object in view which must not become involved with any element of political bias that would only tend to lower the aspect in which I propose to present it. I am looking to the future and not so much to the present. No journal in the land, if it should honor me by taking any notice of what I am about to say, will charge me, I hope, in my analysis of the President's official methods, in indulging in any criticism that may be objectionable either to him or to that great body of the American people who confide in him and admire him for what he has accomplished for his country. Thus restrained and circumscribed, I shall now proceed to illustrate the proposition that the President of the United States, influenced by honest motives, has nevertheless set an example for future Presidents and future generations that is destructive of our best traditions, that challenges the law, and ignores the limitations of the Constitution, and which, if followed under impulses less sincere and patriotic than his own, would ultimately result in an entire misconception of our form of government upon the part of those who may be called upon to administer it, and would effect a gradual upheaval of the principles that underlie and form the bulwark of our institutions.

#### THE DIVISION OF LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWER.

The imperishable distinction of executive, legislative, and judicial functions is the basic principle that supports the organic law of this land. If there has been any confusion upon this subject it ought to be cleared up; if there is a growing misapprehension among the people in regard to the power of the Executive it ought to be arrested before it makes any further inroads upon their credulity; if there has been any violation of the plain intent and meaning of constitutional requirements it ought to be exposed, and if the people, as has been claimed, are utterly indifferent as to the methods employed whether unconstitutional or not, provided the accomplishment inures to the advantage of the country, then they ought to be aroused from their lethargy and confronted with the traditions of the Republic and the genius of our institutions.

The proposition under consideration goes far beyond the President personally, because it relates to our entire conception of executive duty and of governmental distinctions, and my sole object now in entering upon this investigation is to prevent the present interpretation of Executive authority, as far as it lies within my humble power, from becoming without further question or examination a part of the accepted policy of the country. The President is laboring under the honest impression that he is responsible to the country for the legislation of Congress, and that therefore it is his duty to interfere when its proceedings do not comport with his own ideas as to what is best for the interests of the people, and in accordance with this rule he has ignored not the letter, because that can not be done, but the substance and spirit of the plan of a division of governmental functions as embodied in the Constitution. Of course with an Executive who did not have the welfare of the people at heart such an illusion would be fatal to the stability of the Republic. In pursuance of this purpose we have now for the first time in our history a Government practically conducted in nearly all of its departments, with the exception of the judiciary—and even there the encroachment is visible—by the Executive and in conformity with his own ideals and standards. His standards and ideals may be right, and I am satisfied that they are in a number of instances, but I believe, with all the sincerity I possess, that the safety and welfare of the Republic is in danger if the blight of such a policy should be allowed by any insidious process to become engrafted upon our institutions.

#### THE TREATY-MAKING POWER.

I shall now take as the first instance where there has been a conflict between executive and legislative functions—the treaty-making power of the President and the Senate. Article second of the Constitution provides that the President shall have power by and with the advice and consent of the Senate to make treaties, provided that two-thirds of the Senators present concur. In the Santo Domingo affair the President has evidently made his own treaty. I am not discussing the proposition whether his views and purposes are right or wrong in reference to Santo Domingo. He may be right—a great many persons think that he is. He may have performed a great public service for the people of that island and for civilization and humanity in the efforts that he has made to extricate them from their difficulties and misfortunes. This is not the point at issue. The charge that I make is that he has accomplished this in violation of the Constitution, and has set an example for his successors which, if followed, would abrogate the provision

that gives this body the right to be consulted in the treaty-making power.

The principal provision of the Santo Domingo treaty relates to the collection of the revenues of the island and their distribution among its creditors. All other parts of the treaty were subordinate to this. What has been done? The treaty has been practically carried into effect without consulting the Senate. The appointment of an American agent as an official of Santo Domingo to collect its customs was simply a cover and an evasion. Under the principles of international law and the comity of nations this Government is morally bound for the proper custody of this fund, and would be liable in case of its waste or loss. After its collection the only act of any consequence that remained to be done was its distribution, and even this has been practically determined upon, I understand, by settlement with her creditors.

Now, when you add to this the fact that our war ships are in the harbors of the island ostensibly for the purpose of protecting American interests, but in reality protecting the officials of the island against any menace from without, and revolution from within, you have the establishment of a sovereignty or a protectorate without a word from Congress or the Senate sanctioning the same. This is called a *modus vivendi*, but the phrase *modus vivendi* has no application to a condition of this sort, and is a perfectly meaningless absurdity in this connection. What is being done is the maintenance of a *status quo*, but a *status quo* created by the President at the time of the negotiation of the treaty, and without any warrant of law whatsoever. I do not believe that in all the archives of the State Department there can be found any precedent for such a proceeding. Any President could at any time, following this example, make an agreement with any foreign country, uphold it by armed intervention, and then if the Senate declined to confirm his action simply announce that he proposed to maintain the *status quo* or *modus vivendi*, as it is erroneously called, and thus practically effectuate a treaty whether the Senate consents or not. What the President has done in reference to Santo Domingo he can duplicate any day with respect to any of the bankrupt and revolutionary Republics of Central or South America. They may appeal to him for help. He may negotiate a treaty and the Senate may decline to act upon the treaty, and in the meantime he may enter into an agreement with them to collect their customs duties, place them on deposit in an American bank, and in the custody of an American representative, and when Congress or the Senate calls him to account he can, with absolute defiance, announce that the work has been done and that it is the duty of this Government to make a proper division of the funds.

When an appeal comes to him from this quarter he can direct our war ships to protect American interests, and incidentally the party in power or the revolutionists friendly to our intervention, and he can assume control over their custom-houses and maintain a financial protectorate over them without a treaty and without constitutional or legislative sanction. This policy may be all right—perhaps the American people are in favor of this new doctrine; it may be a wonderful accomplishment—Central America may profit by it; it may be a great benefit to us commercially and it may be in the interest of civilization, but as a student and follower of the Constitution, I deprecate the methods that have been adopted, and I appeal to you to know whether we propose to sit silently by and by our indifference or tacit acquiescence submit to a scheme that ignores the privileges of this body; that is not authorized by statute; that does not array itself within any of the functions of the Executive; that vests the treaty-making power exclusively in the President, to whom it does not belong; that overrides the organic law of the land and that virtually proclaims to the country that while the other branches of the Government are controlled by the Constitution, that the Executive is above and beyond it, and whenever his own views or policies conflict with it he will find some way to effectuate his purposes uncontrolled by its limitations.

#### THE JUDICIARY AND THE EXECUTIVE.

Mr. President, I think that the judiciary ought to be entirely free from executive interference. Every person of intelligence must agree with me upon this proposition. The Executive should never, either by approval or criticism, constitute himself a reviewing power over the decisions of the courts. It is, therefore, my judgment that the criticism by the President of Judge Humphrey with reference to his decision in the case known as the Meat Packers' Case, in the Illinois circuit, was uncalled for and an invasion of his judicial prerogatives. I am inclined to think that the decision was correct and would have been sustained upon appeal if an appeal could have been taken; but right or wrong, it did not come within the functions of the President to reprove the judge or animadvert upon his opinion.

We can not tolerate such intrusion upon the rights of the

courts. The courts are not responsible to any President of the United States for their judgments. The exercise of judicial power is just as distinct from the exercise of executive power as is the exercise of legislative power and the Presidents of the future should be told once and forever that when they enter upon this field they are treading on forbidden ground. I can imagine no condition more intolerable than a system under which the judiciary would feel that their judgments and sentences must conform to the wishes of the Executive, and if they are objectionable to him, that they are subject to his censure and reproof. It was this system that for a time brought shame and dishonor upon the administration of the common law, that permitted the guilty to escape and the innocent to suffer and which filled the courts with cruel, servile judges, and made the arm of justice the adjunct of the Crown to fortify the abuses of the tyrant and suppress the liberty of the subject. A judge would have been perfectly justified if he had declined to submit in silence to the rebuke of the Executive. He could well, with calm and dignified defiance, have proclaimed from the bench, I am a sovereign here; you have no greater right to interfere with me than I have extrajudicially to denounce an act of yours as usurpation.

This is the abode of justice, its ground is sacred, and its altar is inviolable. It is like an Anglo-Saxon home, *Domus sua cuique tutissimum refugium*, in which the poorest man, though it be the humblest hut or the lowliest hovel, "may challenge all the forces of the Crown to enter. It may be frail. Its roof may shake. The storm may enter, but the King of England can not enter. All his forces dare not cross the threshold of the ruined tenement."

#### FEDERAL AND STATE FUNCTIONS.

There is another act that the Executive should never undertake, and that is to intrude his presence upon the States in the exercise of their sovereign functions. I send now to the desk of the Secretary to be read the report of an incident which the country seemed to treat with entire indifference, but which at the time it occurred surprised and startled me beyond expression.

BOSTON, June 11.

Governor Guild made public to-day a telegram received by him from President Roosevelt, in which the President, after pointing out that he had been requested to interfere with the execution of Charles L. Tucker, declares that, in his judgment, Governor Guild's decision not to interfere with the carrying out of the sentence on Tucker seemed to him entirely sound and commanded his hearty sympathy.

Tucker is under sentence of death this week, probably to-night, for the murder of Mabel Page at Weston, on March 31, 1904. President Roosevelt's telegram follows:

THE WHITE HOUSE,  
Washington, June 10.

Governor CURTIS GUILD, Boston, Mass.:

Have been requested on behalf of certain parties in Boston to interfere with the execution of Tucker, it being alleged that it is my duty so to do inasmuch as I have the power under the Federal laws.

No showing has been made to me that I have such power, but, without regard to this, I desire to state to you that, in my judgment, your decision not to interfere with the carrying out of the sentence of Tucker seems to me entirely sound and commands my hearty sympathy. It seems particularly a case in which there should be no interference with the carrying out of the sentence.

THEODORE ROOSEVELT.

I never knew a communication of this sort to be sent by a President to the governor of a State since the foundation of the Republic, and, for the President's sake and in his interest, I deeply regret and deplore the occurrence. What does this mean, and what are we coming to? Certain citizens of Massachusetts had petitioned the President to come to the rescue of a prisoner who had been convicted of a capital crime in the State of Massachusetts, and upon whom sentence was about to be executed. I know nothing of the guilt or innocence of the person; he may have been guilty, or he may have been innocent; if innocent, he is not the first innocent man who has been deprived of his liberty or his life under the laws of the land. What was the President's plain and unmistakable duty in the premises? I am willing to admit that the President in his individual capacity had a perfect right to examine the case, and if he believed that an innocent man had been sentenced to death it would have been his duty and his privilege, not as President, but just as it would have been the duty and privilege of any person, to interest himself in his behalf. I have never known the day when I would not have been willing, if I thought a man had been unjustly convicted, to use every effort to obtain justice for him. I believe there is a law of God and humanity higher and more imperative than the law of the State.

But what did the President do in this case? In an official or quasi official document, headed at the White House, he indites a letter to Governor Guild of Massachusetts, who had not written to him at all, in which he intervenes in the proceedings, sympathizes with the governor heartily in carrying out the sentence, and decides that it is a case in which there should be

no interference by the governor, giving practically the official sanction of the President of the United States to the act of the governor of Massachusetts in declining to interfere with the judgment of the court.

It would have been in extremely good taste for Governor Guild to have respectfully remitted this telegram to the President with a caution that he did not request the President's opinion in the case, nor the sanction of his high station, to the carrying out of the execution. Now I am not speaking as a party man, and surely, as I have said, I am not actuated by any feeling of hostility toward the President, because there is no one even upon the Republican side of this Chamber who is willing to give him greater credit for the accomplishments he has wrought for the people of this country than I am; but I shall turn now to members of the Republican party upon this floor, and ask them in all candor whether this was not a grave error upon the part of the President. I ask them, if any of them occupied the place the President does would they, solicited or unsolicited, have sent a communication of this sort to the governor of any State in this Union? I will go further than this and appeal to the President himself to reflect upon this incident and give it his serious consideration, and then determine whether as a student of our institutions he would not deprecate and condemn an act of this sort upon the part of any one whatever connected with any department of the Federal administration.

Of course I will admit that there was no technical violation of any provision of the Constitution, but I appeal now not to ignorance, not to drones and idlers slumbering in apathy and indifference, but to the thought and manhood of my countrymen, irrespective of parties, to know whether we can afford to establish a precedent like this or permit it to go unnoticed. In my judgment it involves a most serious proposition. It practically announces that the acts of State officials are subject to the approval or displeasure of the Federal Government; it obliterates the line between the two; it announces to the governor of every State that if he is in doubt about the performance of some act confided to his supreme authority that he can appeal to the President for guidance; it makes the President the arbiter and umpire in controversies beyond the utmost pale of his jurisdiction; it invests the minds of the rising generation who are studying the framework of our institutions and analyzing their delicate combination with an erroneous idea as to their scope and character; it extends the President's influence into spheres of action entirely beyond the province of his allotted and delegated functions; it makes a gaping wound in the heart of the Constitution, and if extended to its logical limit it dispels the doctrine of reserved rights and enumerated powers and makes the functionaries of sovereign States the agents and deputies of Executive dictation.

#### CONGRESS AND THE EXECUTIVE.

We come now to another and a different scene. The pivotal point around which the railroad rate bill revolved for months in this Chamber was the character of review that the courts were to assume under its provisions. One side claimed that the courts should only exercise a constitutional review under the fifth amendment; the other side advocated a full statutory review from the proceedings of the Interstate Commerce Commission.

The President came into the game early. We realize that no fight is thoroughly equipped upon this floor unless the President is in it. He longs for a fight as the hart panteth after the water brooks. It was a match to the finish between the senior Senator from Rhode Island and the President. They stood respectively in the foremost ranks of their profession. The Senator from Rhode Island was an expert in the ring and had upon many an occasion in this arena been awarded the victor's prize. The President, also, was a dean in the art, and had reached a degree of eminence in his calling that made him a dangerous foe to encounter. It was a most interesting spectacle. The Senator from Rhode Island time and time again went down beneath the ponderous blows of his opponent, but each time he arose like Aurora, the goddess of the dawn, arose from her chariot in the sea. At length science commenced to tell. The Senator from Rhode Island had reserved his strength for the last encounter. The President had changed his tactics so often that he became exhausted and appealed for help. One morning the Senator from Rhode Island appeared in this Chamber with a radiant smile. The President had never penetrated the meaning of that smile. It had lured him like the sirens lure their victims to destruction. The smile indicated that the tournament was over. The Senator from South Carolina looked upon the other side of the Chamber for his promised troops, but they had fled and vanished. An ex-Senator from New Hampshire lay dead upon the field. The President lay entangled in his armor, and his



breastplate and his battle-ax were shattered, and above him waved the pennant of Rhode Island, and the Senator from Rhode Island smiled. If the President had only kept out of this fray it would have assumed an entirely different form and ended in an entirely different way. It was impossible, however, for him to do this. He could not remain quiescent in the White House and observe a great struggle like this progressing without taking part in it. So that he got into it, it really did not make much difference to him upon which side he was enlisted. One day he was upon one side and the next day he was upon the other.

Here we were day after day struggling with questions of constitutional law, as if we really had anything to do with their settlement, laboring under the vain delusion that we had the right to legislate; that we were an independent branch of the Government; that we were one department, and the executive another, each with its separate and well-defined distinctions, imagining these things, and following a vision and a mirage, while the President was at work dominating the legislative will, interposing his offices into the law-making power, assuming legislative rights to a greater extent than he could possibly do if he were sitting here as a member of this body; dismembering the Constitution, and exercising precisely and identically the same power and control as if the Constitution had declared that Congress shall pass no law without the consent of the President; adopting a system that practically blends and unites legislative and executive functions, a system that prevailed in many of the ancient governments that have forever gone to ruin, and which to-day still obtains in other governments, the rebellious protests of whose subjects are echoing over the earth, and whose tottering fabrics I hope are on the rapid road to dissolution.

#### THE POWER OF THE PRESIDENT.

If I were called upon to select the most wonderful exhibition of the President's power that has occurred within my experience, I would take our action upon the canal bill at the close of the last session of Congress. This was an achievement in which his consummate skill in propelling legislation appeared in its most perfect proportions. We had all heard the argument of the junior Senator from South Dakota in favor of a sea-level canal, and its demonstrative facts and unanswerable logic seemed to carry conviction with its presentation.

All at once a wireless message came from the White House. The President had determined that there was either to be a lock canal or that there should be no legislation upon the subject. I can never forget the day upon which the vote was taken. The biography of the President will perhaps some day be written by the senior Senator from Massachusetts. Macaulay said that if Boswell had not been the greatest fool who ever lived, he could not have given to the world the greatest biography that was ever written. This will not apply to the Senator from Massachusetts. He wields a master's hand in biographical literature, and when he writes this biography I hope that he will dwell with glowing emphasis upon this surpassing accomplishment. Napoleon at Austerlitz never turned the scales of fortune with greater celerity of movement or audacity of assault than the President threw into this maneuver. How was it done? What subtle force did he employ in the execution of his plan? The day the vote was taken this Chamber presented a most peculiar aspect. The air seemed laden with some narcotic wafting its somniferous essence over this body. When the roll was called the clerk could hardly hear the responses upon the side of the lock canal, and as the answers came they came in whispered accents and with bated breath. The charm had done its work, the deadly vapor had benumbed our faculties and made us pliant slaves to the master will. Even the senior Senator from Ohio who, when his convictions are aroused, has often on this floor displayed the Nemean lion's nerve, fell a victim to the magic power of the love charm that had been concocted at the laboratory of the White House. I would like the Secretary to read a few of the pathetic and funereal passages of the Senator's deliverance upon this occasion.

It shows how the dominating spirit of the President can ride the whirlwind when he has made up his mind to legislate, and how in absolute defiance of the laws of nature he can produce a senatorial vacuum beneath the sweep of his mighty genius.

Mr. FORAKER. Mr. President, I do not care to discuss this question beyond saying something similar to that which has just been said by the Senator from West Virginia.

"I remember, when the proposition was before the Senate some time ago, as to whether we should adopt the Panama or the Nicaragua route, I was greatly influenced in favor of the Panama route, as no doubt many other Senators were by the fact stated at page 11, according to the print I have before me, of Report 783, part 2, Fifty-seventh Congress, first session, where the Inter-oceanic Canal Committee, or a majority at least of its members—"

Mr. KITTREDGE. A minority.

Mr. FORAKER. Yes; it was a minority report I was looking to see. A minority of the members of that committee set forth the advantages of the Panama route, as contrasted with the Nicaragua route, and then, after they had enumerated nine specific advantages, they added the following:

"10. It is recognized that a sea-level canal is the ideal. The Panama Canal may be either constructed as a sea-level canal or may be subsequently converted into one. On the other hand, no sea-level canal will ever be possible on the Nicaragua route."

Now, like the Senator from West Virginia, I had remained of the idea ever since until within the last two or three months, when this discussion was commenced, that it was the part of wisdom to build a sea-level canal, and I supposed that would be the result of the investigations that were being made by the committee. I did not have time, because occupied with other work, to follow the hearings before that committee and read the testimony as it was taken and printed from day to day for the benefit of the committee and for the benefit of Senators.

I was therefore somewhat unprepared when, a few days ago, it was insisted that we should settle this matter at this time by voting upon it. I then made a request that there might be further time than was proposed to be given us in order that we might investigate this subject and read the testimony to obtain further information.

But we are to vote, and every Senator must speak for himself in a few minutes. There is no time to investigate further, and I propose, although with some misgiving as to whether that is the wisest thing to do, to follow what has been indicated as the preference of those who have the greatest responsibility with respect to this canal.

As I have intimated before in reference to this matter, I did not take the floor for the purpose of discussing it. I only took the floor to express the doubt I have and the regret I have that I can not vote as I propose to vote with greater satisfaction to myself.

#### THE CASE OF ADMIRAL SCHLEY.

I come now to an incident which I would prefer not to allude to. It bears, however, so directly upon the proposition that I am discussing that I think it is my duty to make reference to it. It illustrates in a marked degree, more than any other episode of the present Administration, that in the exercise of his prerogative the President does not feel himself bound by law or precedent whenever he is in pursuit of an object that it is his purpose to accomplish. After the court of inquiry had passed upon the case of Admiral Schley an appeal was taken by the Admiral to the President under the regulations of the Naval Code. There was an enormous record in the case, and it was the duty of the President to decide upon the record and the testimony that it contained. He occupied the same position as the judges of an appellate tribunal do when they are reviewing the decision of an inferior jurisdiction. Assuming now that he had the right to reopen the case and take testimony upon his own motion, he had of course no right to do this except in the presence of Admiral Schley or his counsel, and with their right to cross-examine any witness that was produced. The American bar, or that portion of the bar unacquainted with this proceeding, will hardly believe it until they read it, that the President conducted this appeal in utter disregard of the rights of Admiral Schley, ignoring every principle of common law and statutory procedure, and in violation at least of the spirit of the Constitution, which provides that in all criminal prosecutions "the accused shall be confronted with the witnesses against him and have compulsory process for obtaining witnesses in his favor."

No one can doubt that this was in the nature of a criminal proceeding, although not within the letter of the Constitution. The penalties and punishment attending a decision against the accused were as severe as any that could be inflicted for a violation of any of the laws of his country. The President never gave the admiral the slightest notice that he intended to reopen the case; never confronted him with the witnesses against him; never allowed him any process for obtaining witnesses in his behalf, and never permitted the assistance of any counsel for the defense. In fact, Admiral Schley never received the slightest warning or notice that his case was to be reopened or treated *de novo* in relation to any of the issues involved.

The most important question in the case was in relation to the command at Santiago on the day of the battle. When the appeal came before the President, he summoned the captains of the squadron and ex parte, without any trial or opportunity of defense, upon their uncorroborated testimony, which was excluded at the hearing before the court of inquiry, rendered a decision adverse to Admiral Schley upon all the points in controversy. If the admiral had been present either in person or by counsel, or had been allowed to offer any testimony, he could easily have discredited and impeached the evidence against him. Such a trial as this, if it can be dignified by the name of trial, never took place in any civilized country upon the pages of history since the court of star chamber, unfettered by the rules of law, and employed by James I. and Charles I. to arrest the advance of civil and religious liberty, was relegated to infamy and oblivion.

Captain Evans, the principal witness against Admiral Schley, was his bitter and malignant foe. He testified before the President that he considered himself under the command of Admiral

Sampson throughout the battle, and that he would not have heeded any orders from the *Brooklyn* even if he had received them. The President had before him 50 pages of testimony demonstrating with mathematical accuracy that Admiral Sampson could not possibly have been in command of the battle, as he was over 10 miles distant from the scene of action when the battle began, and never made his appearance until the battle was over, and an hour and a quarter after the last of the ships, the *Cristobal Colon*, had struck her colors and surrendered.

The proof was overwhelming that the distance at this time between the flagship of Admiral Sampson and the *Brooklyn* was fully 17 miles, and that Admiral Sampson was not and could not have been in command when the battle took place. If Captain Evans was testifying truthfully when he stated to the President that he would not have heeded any orders from the *Brooklyn*, the President should have immediately ordered a court-martial in the case, because Admiral Schley was the senior officer of the squadron under the rules of warfare, and under the statutes of the United States, and under its naval regulations when the Spanish ships attempted to escape upon the morning of July 3, and it was the duty of Captain Evans, whether he wanted to do so or not, to heed and follow his signal.

On the morning of July 3, at 10 o'clock, Admiral Sampson signaled to the fleet, "Disregard the motions of the Commander in Chief," and according to the regulations for the government of the Navy of the United States the command from that moment devolved upon Admiral Schley. I shall not enter upon any of the details of this case to any further extent, and I have only adverted to the statement of Captain Evans to show the kind of testimony that influenced the mind of the President and the error that he committed in violation of the cardinal principles of the common law in not permitting Admiral Schley to be confronted by the witnesses who were against him, and who had been summoned by the President to testify to facts that were ruled out at the hearing.

It must be observed that the few officers whose testimony bore against Admiral Schley before the President were his personal enemies, and did not want him to receive any credit for his conduct at Santiago. In fact, long before the battle they had been hostile to him and envious of him. They had stood like "greyhounds in the slips, straining upon the start."

The President says that "this controversy should not be kept alive; to do so would merely do damage to the Navy and the country." It shall, however, be kept alive. The conviction of an innocent man is of more concern and importance to the country than the repose and security of a naval ring, however influential and powerful it may be. Men stood ready in the Senate and House of Representatives to rectify this wrong at the time the President rendered his decision, and were prepared to pass some legislative action that would strike this judgment from the naval records of the country, but the President had said that there should not be any further agitation of this controversy, and thus in his legislative capacity he procured a silent confirmation of the judgment he had rendered in his executive capacity. Let me tell you that the agitation will not cease. The time will come when this case shall be reopened, just as a similar case has recently been reopened in another land, where an innocent man had been hunted to torment and degradation by the scorpions of religious hatred and venom until, to the eternal credit of a liberty-loving people, his sentence reversed, his innocence established, his loyalty vindicated, and his name restored to the roll of honor, he stands to-day exalted by the ordeal through which he has passed, the pride of France and the idol of his countrymen.

Admiral Schley shall be heard. Living or dead, his cause shall be heard. I have never known an injustice of this sort to have been done that the occasion did not arise to redress it. No such melancholy page as this shall blur the annals of our history. It is said that the public opinion of the country is with Admiral Schley and that he has been honored with its verdict. This is true, but it will not suffice. We know that public opinion changes very quickly. It will not do to rely upon it. To-day it sends forth its anathemas of hate, to-morrow it builds its monuments of love. The march to immortality is often amid the poisoned shafts of envy and of malice, and the birthplace of a deathless name is generally amid the ruins of public opinion.

The public opinion of future ages will not be guided by what the public opinion of this hour is, because it will have no means of ascertaining it except from the record, and the record is against him. Other countries remember and dignify their heroes, but in this case Schley was humiliated by the President's suggestion that he "ought not to have weighed danger,

and that it was his trade to dare greatly for the honor of the flag."

The heroes of antiquity were always worshiped and exalted. Greece inscribed their names and deeds in her temples and upon her shrines. "Such honors Ilion to her heroes paid." To this day there can be seen a representation of the triumphant entry of Titus into Rome upon a marble arch erected in his honor by the Roman senate seventy years after the Christian era. Schley might well exclaim in his retirement to the Republic: "Oh, Ingratitude, thou marble-hearted fiend." But he thinks none the less of his country because of the treatment he has received. The man who at Santiago, according to the testimony, stood at an exposed position upon his vessel, with his head erect, when every head was bowed but his, as the enemy's shells were plowing his ship, should not have been thus reproached, and if his own country is cruel and forgetful enough to punish him for his love and sacrifice for her, then I predict that the day will come when at least his countrymen will erect some imperishable memorial whose inscription will not only attest his valorous deeds to all enduring time, but will obliterate the admonition now written upon the naval records of the country that war is a trade, and it was his duty to dare greatly for the honor of the flag, a flag he had carried from the Orient to the Arctic sea, and to whose colors he was as true "as the needle to the pole or the dial to the sun."

#### THE NEW SCHOOL OF POLITICAL SCRIBES.

Now let us look for a moment at the result of the President's construction of his prerogative. A new sect of political scribes have commenced to edit a revised edition of the Constitution. They call it the unwritten Constitution. They are framing an apocryphal collection of epistles and are promulgating their heresy from academic chairs and lecture platforms. The President is the prophet of this new creed and the Messiah of this strange hallucination. They do not propose to add any additional chapters to the original manuscript, but they insist that under the general-welfare clause, which is simply a repetition of the phrase that was used in the Articles of Confederation, this Government has implied powers not enunciated in the charter. They seem to forget that Hamilton's proposition in the Constitutional Convention which provided that Congress was to have power to pass all laws whatsoever, subject to the Executive veto, and the outline that he communicated to Mr. Madison that the Legislature of the United States shall have power to pass all laws which they shall judge necessary to the common defense and welfare of the Union, were not even referred to the committee, and that it was in the plan presented by Patterson and by Randolph and by Pinckney that there was finally evolved that immortal scheme that can never be recast under the plastic touch of political necromancers and enchanter.

When they approach the executive department the implication becomes unlimited, and under the distribution of Executive power the President can perform all functions not allotted to other branches of the Government.

I know that Congress has enacted a great many laws enabling the President to perform the duties confided to him by the Constitution. It has done this under Article I, section 8, subsection 18, of the Constitution, which provides that—

Congress shall have power \* \* \* to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Hamilton, in discussing this clause of the Constitution, said that—

The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless.

There has been a considerable diversity of opinion upon this point. Chief Justice Marshall illumined the proposition in this manner. He said:

Should Congress in the execution of its powers adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power.

And there I stand. No one at this day would demand a literal construction of the Constitution which would deprive the President of performing functions necessary to carry out the powers that are granted to him; on the contrary, he has the broadest field of discretion within which to adopt and exercise whatever methods are proper for this purpose. What I insist upon and contend for is that he must never abuse his constitutional prerogative by invading the domain of other departments,



and must never, under color of title, assume authority upon subjects that have no relation to his office, and do not in the remotest degree appertain to the performance of his executive functions.

We know that every word of the Constitution is written. We know that there is not a line or letter that anyone has the right to insert. The Supreme Court may interpret, it may construe according to the spirit, but it can never add to the text. The Supreme Court may hold that a given act of the Executive is not an interference with legislative functions. It may broaden the right of the President to negotiate a treaty, but if it were ever to decide that the President had a right to conclude a treaty without the constitutional ratification its adjudication would lead either to impeachment or revolution. Every judgment, decree, and order that it renders must be under, and not above and beyond, the Constitution. It can set aside an act of Congress, but it can not abridge or extend the limits of the charter. What the Supreme Court can not do by expression the Executive ought not to be allowed to do by implication.

The President has the right to veto any enactment that we may pass. He has the right, if he chooses to do so, to advise with members in reference to legislation, and to make any suggestions that he may deem proper. This is not a constitutional prerogative, and its propriety has been questioned and assailed, but I am willing within proper bounds to regard it as an incident of his executive functions. One thing he has no right to do, and that is to use the vast public patronage at his disposal to compel obedience to his views. Another thing he has no right to do, and that is to make compacts with the Speaker of the House of Representatives or its committees, to accomplish the legislation that he desires, or prevent legislation. And still another thing he has no right to do, and that is beyond his messages, in which he is given the right at any time to suggest any measure he may deem proper or necessary, to interfere with legislation and to force Congress either to adopt his recommendations or if it rejects them to bring about a breach between the legislative and executive departments that is detrimental to the best interests of the country; that constitutes an assumption of dictatorial power which the people of this Republic, in the course of time, will not submit to, I care not how great the achievement or how much it may conduce to their progress and welfare, or what benefit, advantage, or prosperity we may derive from its accomplishment.

#### THE CHAMPION OF THE NEW SCHOOL.

In order to show that I have not at all exaggerated the claims and pretensions of this new school of Executive construction, I want now to refer to some extracts from the address of an eminent lawyer, delivered before the New York State Bar Association, in which the doctrines of this creed are announced in such unmistakable and unambiguous terms that we are no longer left in any doubt or uncertainty as to the evolution and development that we are undergoing upon the cardinal principles of republican government. If the propositions that he maintains reflect the sentiment of the people, then it is safe to say that the Constitution is a thing of shreds and patches, and the Government that it created is as much of a monarchical institution as the Government of Great Britain, or of any other government, with the exception perhaps of those of Russia and Turkey, upon the Continent of Europe.

Listen now for some of the passages from this delightful dissertation upon the Executive prerogative.

1. The President is the chief invention of the Constitution, a personal magistrate for a republic. \* \* \* The conversion of an abstract sovereignty into a concrete sovereign.

2. The executive and magisterial attributes of the Government being invested in the President, it follows inevitably that the President must possess the executive and magisterial attributes of the people, and that the people retain no undelegated attributes or passive sovereignties under the tenth amendment or otherwise.

3. If Southern States abridge the privileges and immunities of Federal negro citizens, the President, on his own initiative, can and should prohibit such action, whether Congress legislates on the subject or not. If Southern States deny the right of suffrage to Federal negro citizens on the ground of race or color, the President, without waiting for penalizing statutes, can and should use every means, civil, military, or both, to stop it.

4. To execute all his omnipotent functions the people have given the President absolute control of an irresistible physical force, the Army and Navy of 80,000,000 people.

5. Such are the powers of the President, express and implied. They are all plenary. The office and power to execute it are in unqualified language. The power to execute the Constitution is without limitation or restriction. The power to administer the executive sovereignties is complete, and the implied powers are coextensive with the express grants. Hence all the powers of the President are unqualified, plenary, and unlimited.

And now for some of the thrilling climaxes of this remarkable production.

Thus my ideal of the President coincides with the ideal of the people, a majestic constitutional figure uncontrolled by Congress, unrestrained by the courts, vested with plenary constitutional power and absolute constitutional discretion.

How, then, is it possible for the President to exceed his express constitutional authority? What Federal act can he perform that he may not claim is in execution of his office and its attributes, of the Constitution and the laws, or of his executive powers?

Majesty is another attribute. It inheres in every sovereign, be he Czar or President. Imperium majestatique populi Romani.

The President is invested with an office and the whole of it \* \* \* Who hath fixed its bounds? Who hath said, Thus far and no farther? No one has determined its illimitable extent; no one can determine it so long as the Republic endures.

And this matchless conglomeration of incoherent absurdities was delivered, Mr. President, before an assemblage, every man of whom was probably conversant with the authorities and decisions that have consistently placed the brand of judicial condemnation upon this frenzied exposition of executive sovereignty.

#### PERVERSION OF THE CONSTITUTION.

This demonstrates, Mr. President, that the entire trouble arises from the fact that the Constitution is being perverted upon the grant of executive power. Article II of the Constitution says the executive power shall be vested in a President of the United States of America. This does not vest executive power in any greater degree than Article I vests legislative power when it says that all legislative powers herein granted shall be vested in a Congress of the United States, or than Article III vests judicial power except in the Supreme Court of the United States.

I plant myself upon the proposition that the President derives no authority whatever from this clause. Nearly three-quarters of a century ago the greatest political philosophers who ever illustrated the pages of American history settled before this body this contention so that it has been considered a constitutional axiom until the present day. This provision of the Constitution simply relates to the distribution of governmental functions and can not be considered in the light of a grant.

As luminous a constitutional argument as Webster ever made was upon this precise point. The President must derive his authority from the subsequent provisions of the instrument that contain the grant, and the entire grant of power, and which are not in the slightest degree enlarged by the clause that I have quoted. His school of disciples evidently think that I am wrong upon this point and are bewildering the mind of the rising generation upon this proposition. If we were to pass a law here to-day reposing in the President a governmental function beyond the specifications of the Constitution and not necessary for the exercise of any power contained in the specifications, the enactment would be void. Now, if the law would be void, what power has the President without the sanction of law to trespass beyond the confines of his prerogative? The President is either the executive officer of the Government, vested with unlimited executive functions, or he is the Executive acting under special and delegated powers. Which is he? Is he the general executive agent of the people, or their immediate representative, as was once claimed by one of his predecessors who also had an erroneous conception of his prerogative, or is he a special agent who shall look to his commission and credentials for his authority? There are unlimited executive acts performed by monarchical rulers, the exercise of which the framers of the Constitution never intended to repose in the President, and therefore they circumscribed his functions.

I am aware that persons who are not familiar with the source of organic power are losing sight of fundamental distinctions and are looking to results and not instrumentalities. I am not surprised at this view, but I am surprised that any men occupying the highest positions in the Government and instructors and text writers upon constitutional law should at this hour justify a doctrine that strikes down at its very altar the oracle of our faith and substitutes for it a worship that is only temporary and that can not possibly continue and endure. The day will come, Mr. President, I predict it—it is bound to come—when this illusion will disappear, when the people will retrace their steps, and as they flee from the pagan temple they will bear upon their shoulders the ark of the covenant and the scroll of the ancient law.

#### THE HOPE OF DEMOCRACY.

I am now about to conclude. I do not know that anyone will heed anything that I have said or that when once it is buried among the sepulchral archives of this assemblage that anyone will read the admonition that I have cast upon the tide of thought, but I desired for my own satisfaction to throw out the warning and intimation that I have given so that in the future when these questions are discussed and studied I can feel that I have performed my duty in helping to pioneer the way for the investigation.

I believe that if the Democratic party would take up as its battle cry the reserved rights of the States and the inviolate constitutional distinction of the legislative, the judicial, and the executive departments, that we could rally around the doc-

trine the intelligent suffrages of our countrymen. These provisions constitute the logic and the philosophy of the instrument. I can not quite agree with Gladstone that the American Constitution is the most wonderful work ever struck off in a given time by the brain and purpose of man. I can not agree with him because we all know that the Constitution was not a spontaneous production, but was the result of compromise and of violent and heated controversy. We know that the conflict in the convention at one stage was so irrepressible and the crisis so serious that it became necessary for Benjamin Franklin, who was not renowned for his piety or celebrated for his devotion, to move that in future the sessions be opened with prayer. We also know another fact, and that is, that there never was the slightest division upon the proposition that I have just been arguing and that so soon as the convention was assembled and organized the first formal resolution that was presented reads as follows:

That a national government ought to be established consisting of separate legislative, executive, and judicial departments.

And from that day to the advent of the present Administration no one has ever doubted the supreme wisdom of this distinction. This is the theory toward which every other article in the Constitution gravitates as the center of attraction. It is this imperishable distinction more than any other provision that the instrument contains that makes the Constitution of the United States now read in every living language and at every university, college, and seat of learning where political science is taught. Not only this, but it is perused with fear and trembling by tyrants upon their tottering thrones. To-day in the Persian palace, in a land which for over two thousand years has been under the dominion of despots, it is an object lesson as the dawn of republican government is breaking over that benighted sphere. It is studied in the camp of the revolutionist and by the glimmering light in the dungeon of the political convict and by exiled philosophers in penal colonies and in Siberian mines, and at this hour it is the subject of meditation and analysis at every place where freemen assemble to assert the rights that God has given them and which it lies not in the power of any man to deprive them of.

I know it is said that the people do not care, if the accomplishment is for their benefit, what the methods are that are employed to reach it, and whether the Constitution is violated or not. The end justifies the means. I do not believe it. I do not believe that the people are in favor of tampering with the Constitution, and, by insidious inroads upon its provisions, paving the way for dictatorial government. At present both parties are cutting loose from its anchorage. The Republican party has in the President a helmsman bold and tactical, who with his chart of aggression and annexation is steering for foreign shores, gamboling on the waves indifferent as to the depths beneath; the Democratic party at the present time, it seems to me, is on the wild and tumultuous sea, with different pilots, all trying to steer it in opposite directions, and if it does not quickly take its bearings I fear that it will gradually drift toward that bourn from which no traveler ever returns.

Mr. President, this division of governmental power into executive, legislative, and judicial functions is the arch that supports the bridge of the Constitution. Underneath it is the chasm in which every government of antiquity that has ignored this distinction lies buried in wreck and ruin. Touch not the arch; if we do the masonry will crumble and the entire fabric will "haste to swift decay." Keep the keystone inviolate and intact, so that no sacrilegious hand shall blast or hew it down, and the whole majestic structure shall time defy, as rocks resist the billows and the sky.

Mr. LODGE. Mr. President, the Senator from Maryland [Mr. RAYNER] referred to me in very complimentary terms, with the expression of the hope that I might be the President's biographer. I was reminded irresistibly of a story told me by my former colleague, Senator Hoar, who had introduced a bill in which he was deeply interested and which had been referred to Mr. Evarts, the author, I think, of the maxim that "Any question would settle itself if it were left alone long enough." Mr. Evarts took no action on the bill. One day Mr. Hoar met him in the lobby and said: "By the way, Mr. Evarts, I wish when you report that bill you would notify my executors." Evarts said: "They would be gentlemen whom I shall be delighted to meet." [Laughter.] I have not any question that the Senator from Maryland and his associates on that side would be delighted to meet the President's biographer.

Mr. RAYNER. I should like to say to the Senator from Massachusetts—

Mr. LODGE. I did not interrupt the Senator, and he will oblige me if he will allow me to proceed.

Mr. RAYNER. I would rather read the President's autobi-

ography than his biography by the Senator from Massachusetts. No one thinks more of the President than I do—

Mr. LODGE. Mr. President—

The VICE-PRESIDENT. The Senator from Massachusetts declines to yield.

Mr. LODGE. I think I might be allowed to finish. I shall have but a few minutes.

The VICE-PRESIDENT. The Senator from Massachusetts will proceed.

Mr. LODGE. I do not intend, Mr. President, to enter upon any defense of the President. None is needed to-day, for I think I have rarely heard a greater tribute to his power, popularity, and success than has been delivered by the Senator from Maryland this morning.

Nor do I desire to discuss the separation of powers among the different departments of the Government. I believe most firmly in the necessity of that great principle. I go, indeed, a little further, I think, in that direction than the Senator from Maryland. I not only think the executive should not interfere with the legislative or judicial branches, but I do not think the legislative should interfere with the executive or the judicial.

I share the Senator's reverence for the Constitution. I do not know whether "tyrants read it on their tottering thrones" or not, but I know that it has been the great instrument, as interpreted by Marshall and his successors, under which this country has grown to be a great and powerful nation.

The Senator said—and this is all I desire to refer to—that out of many illustrations he had selected a few to show where the President had invaded the province of other departments of the Government. There were one or two cases where it seemed to me the selection had not been happy and where his statement of the case appeared to me to convey a slightly erroneous impression.

In regard to Santo Domingo, the President has made a treaty in the ordinary and usual form and submitted it to the Senate of the United States, where it now is. Those Senators who have introduced in a very novel way party politics and a party caucus into the consideration of our foreign relations are better able to explain than I why that treaty still remains on the Executive Calendar unacted upon. The treaty is here, as I have said, in regular form. The President has made no "modus vivendi" with Santo Domingo nor any arrangement with that Republic. The Republic of Santo Domingo passed a decree for the administration of the customs and asked the President to nominate some officer or some American citizen to take charge of the custom-houses of Santo Domingo pending the consideration of the treaty.

The VICE-PRESIDENT. The Senator from Massachusetts will kindly suspend while the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. Table Calendar No. 21, Senate resolution 214, by Mr. CARTER.

Mr. CARTER. I ask that the unfinished business be temporarily laid aside.

The VICE-PRESIDENT. The Senator from Montana asks that the unfinished business be temporarily laid aside. Without objection, it is so ordered. The Senator from Massachusetts will proceed.

Mr. LODGE. In accordance with the request of the Government of the Dominican Republic, an officer was appointed, who has taken charge of those revenues, paying a part of them over to the Government of the island and depositing a portion of them to the credit of the island with a trust company in New York, where they now are. There has been no objection to the arrangement in Santo Domingo, at whose request it was made, and the President has made no agreement with them. He has simply complied with the request made by them formally in a published decree settling the distribution of the revenues while the treaty was pending in the Senate.

The Senator also referred to my State and a telegram of the President to the governor of Massachusetts. The Tucker case was one which caused great excitement. There was great pressure for the pardon of the convicted men. An effort was made to get the President to interfere in that matter. The crime was committed in the State. It was dealt with by the courts of the State. The Federal Government had nothing on earth to do with it. The appeal, however, was made to the President. He declined to interfere on the precise ground that he had no power to interfere in a matter so peculiarly belonging to a State as this conviction in a State court.

Yet the Senator blames him for a refusal to interfere where his power did not permit him to interfere, because he expressed to the governor his approbation of the governor's action. The governor of Massachusetts took that action, as I have said, when there was a great pressure upon him. He did his duty



as he saw it in a fearless and high-minded way, one much to be commended; and the President, who happened to be his personal friend, in declining to interfere expressed his approbation, as any man had the right to express his approbation or disapprobation of the governor's conduct.

As to the rate law, Mr. President, the Senator described the contest which we had here last winter over that famous measure in beautiful if somewhat mingled metaphors. And yet he showed that this encroaching President was defeated, as I understood him. But it appeared to me, Mr. President, that the real trouble in regard to the rate law, which haunts the mind of the Senator from Maryland and his Democratic colleagues, was that the Republican party united to pass the bill in agreement with the President as to the terms in which it should be enacted, and that that caused disappointment to some of our friends of the opposite party, from which they have not yet entirely recovered.

As so much has been said about the President's reaching out for new and extended power, I wish to call attention—and then I shall conclude—to the fact that nothing the President has ever proposed, no policy that he has ever suggested, has gone so far, in my judgment, toward the destruction not only of the Constitution, but of our whole system of government, as the policy advocated in New York by the great leader of the Democratic party—that the Government should own the railroads of the country.

That, Mr. President, goes much further than a doubtful interpretation or even a violation of the Constitution, for it strikes at the very foundations of State and national governments alike, on which our whole system has been built up. It is not a question as between State and nation. It is a question as to what our government shall be—whether it shall be the limited and free government under which we have lived both in State and nation, and lived in prosperity and power for these hundred years and more, or whether we shall change our whole system of government from top to bottom in State and nation into an open and avowed socialism. The President of the United States, so berated here to-day for having gone beyond his constitutional powers, is an opponent of the ownership of railroads or of all public utilities by government, believing that those should remain within individual and private ownership regulated and supervised by the State. It is from the party to which the Senator belongs that the policy emanates which would take over into the possession of the State and national governments the ownership and absolute control of every railroad in the country.

Mr. WHYTE obtained the floor.

Mr. HEYBURN. Mr. President—

The VICE-PRESIDENT. Does the junior Senator from Maryland yield to the Senator from Idaho?

Mr. WHYTE. Certainly.

Mr. HEYBURN. By virtue of an understanding, we waived the call of the regular order in order that the senior Senator from Maryland [Mr. RAYNER] might present a matter. I would not be willing to postpone the consideration of the regular order longer than is necessary for the junior Senator from Maryland to present a matter which, if it leads to discussion, I shall ask to have laid aside.

Mr. CARMACK. Will the Senator from Maryland yield to me for just a word?

Mr. WHYTE. Certainly.

Mr. CARMACK. Mr. President, I wish to say a word in response to what the Senator from Massachusetts [Mr. LODGE] said in reference to the terrible consequences to follow if Mr. Bryan's idea of the government ownership of railroads should be carried out. The Senator does not seem to remember what the President of the United States himself has said on that subject. The only difference between the President of the United States and Mr. Bryan on that proposition is that Mr. Bryan has said that if government regulation fails government ownership ought to come. The President of the United States has said that if government regulation fails government ownership will have to come. That is the only difference between those two gentlemen on that proposition.

WASHINGTON, SPA SPRING AND GRETGA RAILROAD.

Mr. WHYTE. I ask unanimous consent to call up the bill (S. 3668) to authorize the Washington, Spa Spring and Gretga Railroad Company, of Prince George County, to extend its street railway into the District of Columbia. I was about to call it up the other day when the Senator from Maine [Mr. HALE] made objection to the immediate consideration of any bill.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

Mr. GALLINGER. There are amendments.

The VICE-PRESIDENT. The amendments reported by the

Committee on the District of Columbia will be stated in their order.

The first amendment was, in section 7, page 3, line 15, after the word "when," to strike out "any highway occupied by the company" and to insert "said Bladensburg road;" so as to make the section read:

SEC. 7. That the company shall keep the space between its rails and tracks and 2 feet exterior thereto in good condition, to the satisfaction of the Commissioners of the District of Columbia. The pavement of these spaces shall be at least as good as that of the contiguous roadway. The proper authorities shall have the right to make changes of grade and other improvements which they may deem necessary, and when said Bladensburg road is improved the company shall bear the entire expense of improving said spaces to correspond with the remainder of the roadway. The requirements of this section shall be enforceable under the provisions of section 5 of the act providing a permanent form of government for the District of Columbia, approved June 11, 1878.

The amendment was agreed to.

The next amendment was, in section 9, page 4, line 3, after the word "Columbia," to insert "and approved by them, and it shall be the duty of said railroad company to submit such time-table for approval whenever required by said Commissioners, and said company is required to run its cars in accordance with said approved time-table;" so as to make the section read:

SEC. 9. That the cars shall be run as often as public convenience requires, on a time-table satisfactory to the Commissioners of the District of Columbia, and approved by them, and it shall be the duty of said railroad company to submit such time-table for approval whenever required by said Commissioners, and said company is required to run its cars in accordance with said approved time-table.

The amendment was agreed to.

The next amendment was, in section 13, page 4, line 19, after the word "passenger," to insert "and six tickets shall be sold for 25 cents, each good for the transportation of one passenger over the whole or any part of said line in the District of Columbia;" so as to make the section read:

SEC. 13. That the rate of fare which may be charged for the transportation of passengers over the line of said company within the District of Columbia shall not exceed 5 cents per passenger, and six tickets shall be sold for 25 cents, each good for the transportation of one passenger over the whole or any part of said line in the District of Columbia.

The amendment was agreed to.

The next amendment was, in section 15, page 5, line 7, after the word "before," to insert "August;" and in line 13, after the words "equal to," to strike out "2 per cent per annum thereon for the first five years, 3 per cent per annum thereon for the second five years, and 4 per cent per annum thereafter" and insert "4 per cent per annum thereon;" so as to make the section read:

SEC. 15. That the said company, through its proper officers, shall annually, on or before August 1, make return under oath to the board of personal-tax assessors of the District of Columbia of the amount of its gross receipts in the District of Columbia during the preceding year ending June 30, and shall pay to the collector of taxes of the District of Columbia, at the same time and in the same manner as other personal taxes are paid, an amount equal to 4 per cent per annum thereon, in lieu of other personal taxes; that the real estate of the said company in the District of Columbia shall be assessed and taxed as is other real estate in said District.

The amendment was agreed to.

The next amendment was, in section 19, page 6, line 15, after the word "to," to strike out "and" and insert "or;" so as to make the section read:

SEC. 19. That all the conditions, requirements, and obligations imposed by this act shall be complied with by any of the successors to or assigns of said company within said District.

The amendment was agreed to.

The next amendment was, in section 20, page 6, line 17, after the word "within," to insert "sixty;" in line 18, after the word "deposit," to insert "one thousand," and in line 23, after the word "said," to insert "one thousand;" so as to make the section read:

SEC. 20. That within sixty days from the approval of this act the company shall deposit \$1,000 with the collector of taxes of the District of Columbia, to guarantee the construction of this railroad within the prescribed time, and if this sum is not so deposited this act shall be null and void. If the sum is so deposited and the road is not in operation as herein prescribed, said \$1,000 shall be forfeited to the District of Columbia and this act shall be void.

The amendment was agreed to.

The next amendment was, in section 22, page 7, line 7, after the word "of," to strike out "from — to" and insert "not less than twenty nor more than one hundred;" so as to make the section read:

SEC. 22. That each and every violation of the requirements of this act or of the regulations of the Commissioners of the District of Columbia made under the authority thereof shall be punishable by a fine of not less than twenty nor more than one hundred dollars, in the discretion of the court, such fines to be collectible in any court of competent jurisdiction as other fines and penalties are collected in the District of Columbia.

The amendment was agreed to.

The next amendment was, in section 24, page 7, line 20, after the word "shall," to strike out "have like" and insert "take;" so as to make the section read:

SEC. 24. That this act shall take effect from and after the date of its passage.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

RATHBUN, BEACHY & CO.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (S. 7271) for the relief of Rathbun, Beachy & Co.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to pay to Rathbun, Beachy & Co., of Webster, S. Dak., \$1,000 in full compensation for loss in sale of cattle illegally placed in quarantine by Government inspector at the stock yards in Chicago, Ill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PORT HUDSON FORLORN-HOPE STORMING PARTY.

Mr. BULKELEY. I ask unanimous consent for the present consideration of the bill (S. 6725) to grant medals to survivors and heirs of volunteers of the Port Hudson forlorn-hope storming party.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill; which had been reported from the Committee on Military Affairs, with an amendment to strike out all after the enacting clause and insert:

That the Secretary of War is hereby authorized to procure a suitable bronze medal commemorating the organization of the volunteer storming party against the works at Port Hudson, La., organized, pursuant to General Order No. 49, by command of Major-General Banks, commanding the Department of the Gulf, June 15, 1863, and present one of said medals to each of the volunteers of said storming party, or in case of the decease of the volunteer said medal shall be given to his widow or oldest heir: *Provided*, That such medal shall bear an inscription in suitable language, to be designated by the Secretary of War, giving the name of the volunteer, his company and regiment, and stating in substance that the person to whom this medal was awarded volunteered for said storming party: *Provided further*, That for the purposes of this act the sum of \$2,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

DAMS ACROSS THE MISSOURI RIVER.

Mr. CARTER. I ask unanimous consent for the present consideration of the bill (S. 7515) to authorize the Missouri River Improvement Company, a Montana corporation, to construct a dam or dams across the Missouri River.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill; which had been reported from the Committee on Commerce with amendments.

The first amendment was, in section 1, line 6, after the word "points," to insert "to be approved by the Secretary of War; in line 8, after the word "five," to strike out "west" and insert "east;" in line 10, after the word "meridian," to strike out "to be determined by them, and approved by the Secretary of War;" and on page 2, line 3, after the word "use," to strike out the following proviso:

*Provided*, That the plans for the construction of said dam or dams and appurtenant works shall be submitted to and approved by the Chief of Engineers and the Secretary of War: *Provided further*, That whenever required to do so by the Secretary of War said company, its successors or assigns, shall construct and maintain in connection with said dam or dams a suitable boom or log sluice; that said company, its successors or assigns, shall construct and maintain in said dam or dams suitable fishways, to be approved by the United States Fish Commissioner, and shall obtain and convey to the United States, whenever requested to do so by the Secretary of War, clear title to such land as in his judgment may be required for constructions and approaches to said dam or dams for transferring boats and freight around the same, and shall grant to the United States a free use of water power for operating such construction work; and to insure compliance with these conditions the said company, its successors or assigns, shall execute and deliver to the Secretary of War a proper bond in such amount as may be fixed by him: *And provided further*, That the said company, its successors or assigns, shall be liable for any damage to private property resulting from the construction and operation of said dam or dams, and appurtenant works, either by overflow or otherwise, and proceedings to recover compensation for such damage may be instituted either in the State or Federal courts.

And insert:

in accordance with the provisions of the act entitled "An act to regulate the construction of dams across navigable waters," approved June 21, 1906.

So as to make the section read:

That the consent of the Government is hereby given to the Missouri River Improvement Company, a Montana corporation, its successors or assigns, to construct across the Missouri River at some point or points, to be approved by the Secretary of War, between sections 20 and 21, township 21 north, range 5 east, and the north line of township 24 north, range 8 east, Montana meridian, a dam or dams and canals and appurtenances thereof for water power and other purposes, and in connection therewith a foot bridge or bridges for public use, in accordance with the provisions of the act entitled "An act to regulate the construction of dams across navigable waters," approved June 21, 1906.

The amendment was agreed to.

The next amendment was, on page 3, after line 5, to strike out section 2, as follows:

SEC. 2. That this act shall be null and void unless the structures herein authorized shall be commenced within one year.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PREVENTION OF CONTAGIOUS DISEASES IN THE DISTRICT.

Mr. GALLINGER. I ask unanimous consent for the present consideration of the bill (H. R. 16868) for the prevention of scarlet fever, diphtheria, measles, whooping cough, chicken pox, epidemic cerebro-spinal meningitis, and typhoid fever in the District of Columbia.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

T. J. H. HARRIS.

Mr. TILLMAN. Mr. President, I have three or four House bills concerning matters to which no one will object, which I now ask to have considered. I first ask unanimous consent for the present consideration of a bill (H. R. 6417) for the relief of T. J. H. Harris.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to T. J. H. Harris, of Union, S. C., \$341.55, that being the balance due him for services rendered the United States in enumerating the population of Union County, S. C., in the year 1860.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

LEGAL REPRESENTATIVES OF BENJAMIN F. PETTIT.

Mr. TILLMAN. I now ask unanimous consent for the present consideration of the bill (H. R. 9132) for the relief of the legal representatives of Benjamin F. Pettit.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay the legal representatives of Benjamin F. Pettit, of Spartanburg, S. C., \$146.97, for services rendered the United States in carrying the mails in 1860 and 1861.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

LEGAL REPRESENTATIVES OF CHARLES D. SOUTHERLIN.

Mr. TILLMAN. Mr. President—

Mr. SCOTT. I trust the Senator from South Carolina will allow some other bills which have been awaiting consideration to be now considered.

Mr. TILLMAN. I will say to the Senator that I shall be done in a minute. The bills for which I ask consideration are House bills and have been waiting for a long time.

Mr. SCOTT. The Senator, I trust, will give some other House bills an opportunity to be considered.

Mr. TILLMAN. I shall be through in a moment.

Mr. SCOTT. Very well.

Mr. TILLMAN. I now ask unanimous consent for the present consideration of the bill (H. R. 9131) for the relief of the legal representatives of Charles D. Southerlin.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay the legal representatives of Charles D. Southerlin, of Greenville, S. C., \$537.52 for services rendered the United States in carrying the mails in 1860 and 1861.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

T. B. STACKHOUSE.

Mr. TILLMAN. One more bill and I am done, Mr. President. I now ask unanimous consent for the present consideration of the bill (H. R. 6418) for the relief of T. B. Stackhouse, a deputy collector of internal revenue for the district of South Carolina during the fiscal year 1894 and 1895.

There being no objection, the Senate, as in Committee of the



Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to T. B. Stackhouse \$72.32, being the balance due for necessary traveling expenses as deputy collector of internal revenue for the district of South Carolina for the fiscal year ended June 30, 1895.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### AMERICAN REGISTERS FOR STEAMERS MARIE AND SUCCESS.

Mr. DEPEW. I ask unanimous consent for the present consideration of the bill (H. R. 7014) to provide American registers for the steamers *Marie* and *Success*.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Commissioner of Navigation to cause the foreign-built steamers *Marie* and *Success*, wrecked in the waters of Cuba and the Isthmus of Panama, respectively, and purchased and wholly owned by the Merritt & Chapman Derrick and Wrecking Company, of New York City, incorporated under the laws of the State of West Virginia, to be registered as vessels of the United States whenever it shall be shown to the Commissioner of Navigation that the repairs on each of the vessels amount to three times the actual cost of each of the wrecks to the owner.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### ESTATE OF CAPT. CHARLES E. RUSSELL.

Mr. CULBERSON. I ask unanimous consent for the present consideration of the bill (H. R. 10015) for the relief of the estate of Capt. Charles E. Russell, deceased.

Mr. HEYBURN. Mr. President, I should like to inquire of the Senator from Texas as to whether or not this is a brief bill, and whether there will be any opposition to it?

Mr. CULBERSON. It is a very short bill, I will state to the Senator from Idaho.

Mr. HEYBURN. And there is no opposition to it?

Mr. CULBERSON. None that I have ever heard of. The bill has passed the House.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to the estate of Capt. Charles E. Russell, deceased, \$721.86, that being the amount due for money disbursed by him while serving as quartermaster, Eighth United States Infantry, he having died in the service May 26, 1902, before he had time to prepare a proper settlement with the United States Government, which settlement was being prepared at the time of his death.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### FORT BERTHOLD INDIAN RESERVATION, N. DAK.

Mr. HANSBROUGH. I ask unanimous consent for the present consideration of the bill (S. 7495) to define the status of certain patents and pending entries, selections, and filings on lands formerly within the Fort Berthold Indian Reservation in North Dakota.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes that all patents heretofore issued on entries and selections made without fraud under any of the laws providing for disposal of the public lands, on lands formerly within the Fort Berthold Indian Reservation, in North Dakota, which were opened to settlement by the President's proclamation dated May 20, 1891, pursuant to the provisions of an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1892, and for other purposes," approved March 3, 1891, shall have the same effect, and all pending entries, selections, or filings embracing such lands made prior to November 14, 1906, shall be disposed of in the same manner and under the same restrictions and limitations as if the lands included in such patents, entries, selections, or filings had been subject to disposition under the general provisions of the public-land laws.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

#### ALEXANDER PLACE AND POPLAR STREET, DISTRICT OF COLUMBIA.

Mr. GALLINGER. I ask unanimous consent for the present consideration of the bill (H. R. 19568) vacating Alexander place and Poplar street in the subdivision of a part of a tract called Lincoln, District of Columbia, and vesting title in the present owner.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Commissioners of the District of Columbia to abandon Alexander place

and that portion of Poplar street dedicated to the District of Columbia in the subdivision of a part of Lincoln, recorded in book county 18, page 35, of the records of the surveyor's office, the area so abandoned to revert to the present owner of all the lots in the subdivision.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### BRIDGES ACROSS TUG FORK OF BIG SANDY RIVER.

Mr. SCOTT. I ask unanimous consent for the present consideration of the bill (H. R. 23219) to authorize Majestic Collieries Company, of Eckman, W. Va., to construct a bridge across Tug Fork of Big Sandy River about 2½ miles west of Devon, W. Va., a station on the Norfolk and Western Railway.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. SCOTT. I also ask unanimous consent for the present consideration of the bill (H. R. 24109) to authorize the Norfolk and Western Railway Company to construct sundry bridges across the Tug Fork of the Big Sandy River.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments, in section 1, on page 1, line 10, after the word "as," to strike out the word "the" and insert "may be selected by;" and in line 11, after the word "Company," to strike out "may deem suitable for the passage of its road, over the said Tug Fork of the Big Sandy River in the States of West Virginia and Kentucky and in the States of West Virginia and Virginia" and insert "and approved by the Secretary of War;" so as to make the section read:

That the Norfolk and Western Railway Company, a corporation organized under the laws of the State of Virginia, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate bridges and approaches thereto across the Tug Fork of Big Sandy River at such points where the same forms the boundary line between the States of West Virginia and Kentucky or the boundary line between the States of West Virginia and Virginia, as may be selected by said company and approved by the Secretary of War, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

#### LYMAN BALLOU.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (H. R. 23889) authorizing the Secretary of the Interior to issue deed of conveyance to Lyman Ballou to certain lands in Custer County, S. Dak.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Interior to issue a deed of conveyance to Lyman Ballou, of the town of Buffalo Gap, Custer County, S. Dak., to the following-described lands, to wit: The north 100 feet of lot 1 in block 7 of the original town of Buffalo Gap; also all that part of the southeast quarter of the southwest quarter of section 29 in township 6 south, of range 7 east of the Black Hills meridian, bounded and described as follows, to wit: Beginning at the intersection of the north line of Pine street with the west line of Second street, running thence east on the north line of Pine street 80 feet; thence south on the east line of Second street 80 feet; thence west on the south line of Pine street 80 feet; thence north on the west line of Second street 80 feet to the place of beginning, as said streets are laid down and described on the plat of the town of Buffalo Gap, on record in the office of the register of deeds of Custer County, S. Dak., all in the town of Buffalo Gap, Custer County, S. Dak.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. McCUMBER. Mr. President, I suggest the want of a quorum.

The VICE-PRESIDENT. The absence of a quorum being suggested, the Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Clapp	Flint	Knox
Blackburn	Clark, Mont.	Frazier	Latimer
Brandegee	Hemenway	Frye	Long
Bulkeley	Clay	Fulton	McCreary
Burkett	Crane	Gallinger	McCumber
Burnham	Culbertson	Clark, Wyo.	McLaurin
Burrows	Curtis	Heyburn	Mallory
Carmack	Depew	Kean	Millard
Carter	Dick	Kittredge	Money

Morgan  
Overman  
Patterson

Perkins  
Smoot  
Spooner

Stone  
Sutherland  
Taft

Tillman  
Whyte

The VICE-PRESIDENT. Forty-seven Senators have answered to their names. A quorum is present.

#### ISSUANCE OF LAND PATENTS.

The Senate resumed the consideration of the resolution submitted by Mr. CARTER on the 9th instant, as follows:

*Resolved*, That under the homestead laws of the United States a duly qualified entryman furnishing competent evidence of full compliance with said laws and all rules and regulations promulgated by authority thereof is, in the absence of contest or of any charge or evidence of fraud or mistake, legally entitled to a patent for the land embraced in the entry as to which final proof has been so furnished, and no executive officer is authorized to forbid and prevent the issuance and delivery of such patent.

Mr. HEYBURN. Mr. President, yesterday when I concluded my remarks I was considering the special message of the President of the United States, which was sent to the Senate on December 17, relative to the public lands of the United States and their disposal. I was particularly considering that portion of the message which advised the Senate that the President had suspended the operation of the public-land laws and had directed that the Secretary of the Interior should issue no more patents under any land laws until certain conditions were complied with. I had discussed, first, the right of the President to make this order, and had cited to the Senate the decisions of the Supreme Court of the United States to the effect that the operation of a law can not be suspended by an Executive order of the President of the United States or of any other officer of the United States. I had discussed the situation in which this Executive order left the homesteaders upon the public lands of the United States and had drawn the attention of the Senate to the number of persons affected by this order and the manner in which the order did affect their rights.

My attention was called during the discussion of this question to a subsequent order that has been made by the President of the United States, under date of January 25, 1907. This order being only five days old, it had not been called to my attention, and it was suggested that it afforded the relief necessary against some of the objections which I urged to the Executive order. I have sent for and have a copy of it before me. I find that it does not in any measure meet the next objection that I had intended to urge to the message.

#### MINING CLAIMS.

I had about concluded the presentation of the facts in regard to homesteaders and was proceeding to take up the question of the mineral lands of the United States when the suggestion came to me that it would not be necessary to consider that phase or portion of the message of December 17 because of the subsequent order of January 25. I find that the order of January 25 affords no adequate relief from the onerous conditions and results of the message of December 17. In the message of December 17 it is provided:

I have directed the Secretary of the Interior to allow no patent to be issued to public land under any law until by an examination on the ground actual compliance with that law has been found to exist. For this purpose an increase of special agents in the General Land Office is urgently required; unless it is given, bona fide would-be settlers will be put to grave inconvenience, or else the fraud will in large part go on. Further, the Secretary of the Interior should be enabled—

This is the part—

to employ enough mining experts to examine the validity of all mineral-land claims, and to undertake the supervision and control of the use of the mineral fuels still belonging to the United States.

#### MINERAL CLAIMS.

I direct the attention of the Senate to that part of the message I have read which refers to mineral claims or includes the location of mining claims, which constitute that portion of the wealth of the country—gold, silver, copper, lead, cinnabar, and that class of metals. I can not conceive of such entire lack of information in regard to the character, the nature, and the necessities surrounding the location of mining claims as to prompt such a declaration. I say it with all due respect to the intention of the President to send no message to the Congress that would not be justified, at least according to the judgment of a portion of the people.

The proposition that the location of a prospector or miner shall be subjected to the scrutiny of an "expert," sent out by any Department of the Government, or from any source whatever, before that claim shall be recognized as having a legal status entitling the owner to possession and the right of development is beyond comprehension. The history of mining should have taught those who are responsible for such a declaration that it was not only impracticable, but that it would result in a complete stagnation of the mining interests of the country. The mines that in this day and in the days past have produced the

hundreds of millions of dollars which have been added to the wealth of this country were condemned by the experts of the mining or so-called "mining" world, one after another, until it has become a matter of jest and of ridicule to talk about having the opinion of an expert.

Mr. CARTER. Mr. President—

The PRESIDING OFFICER (Mr. KNOX in the chair). Does the Senator from Idaho yield to the Senator from Montana?

Mr. HEYBURN. Certainly.

Mr. CARTER. While the Senator is dwelling upon the output of the mines, I desire to suggest for the RECORD the fact that under our mining laws and regulations as existing since 1848 so happy has been the result that from gold, silver, copper, and lead mines we have produced over \$7,000,000,000, added from the mines to the national wealth under the existing system.

Mr. HEYBURN. The product of the mines of the United States in gold and silver has established and maintained the money standard of the world for more than half a century. Without it the world could not have maintained the financial basis of the great nations of the earth to-day, nor could they maintain it. It has supplied the basic principle of finance not only in this country, but in others. Without the product of the mines of the United States in the past and in the future the financial system of the world would have to be changed. It enabled this country to resume specie payment. It furnished a basis of money values at a time when the credit of this nation was subject to the vicissitudes of internal strife. This interest not only has thus contributed to the financial stability of the country, but it employs vast capital and labor at remunerative wages—wages that have not an equal in any other occupation on earth. I am speaking of the precious metals. I can include within that the great copper mines of the world, which have contributed to the development and establishment of the great electrical industry of the world and maintain it to-day and without which it could not be maintained. The mines of that little country embraced within the Pacific coast States to-day maintain the basis upon which the great electrical industries of the world rest.

I pass these questions of economics. They can not be disregarded in considering the importance of the mining industry; but at this time I have it in mind rather to discuss the rights of individuals than the relation which this great industry of combined mining bears to the prosperity of the country.

#### DEVELOPMENT OF THE MINES OF THE COUNTRY.

Congress enacted laws to promote the development of the mines of the country thirty-five years ago; yes, first in 1866, which gave to a citizen of the United States or a person who had declared his intention to become a citizen of the United States the right to go upon the unappropriated public mineral lands of the United States and select for himself a limited area for his own use and benefit, making the condition precedent simply that he should discover mineral-bearing rock in place before making the location, so far as lode claims are concerned; that he should discover gold in the gravel before making the location, if a placer claim, so far as placer claims are concerned, placer claims being the auriferous gravel of the country bearing this metal, and lode claims being ledges of rock in place in the solid formation of the earth. Congress gave that right absolutely upon the discovery of mineral-bearing rock in place. The only prerequisite to the taking of title was the discovery of mineral-bearing rock in place.

Now, the executive department of the Government would subject the judgment of the prospector to the inspection and approval of an expert. The United States Supreme Court in the case of *Harrington v. Chambers* settled the question as to what Congress meant when it said that a prospector might make a location whenever he had discovered mineral-bearing rock in place which, in the judgment of the locator, was sufficient to justify him in expending his time and labor in developing the prospect, not in the judgment of some other person, but in the judgment of the prospector. It was attempted in that case, as it has been in others, to interpolate the word "reasonable" in determining the judgment of the prospector. It was contended that it must be such a showing of mineral in the rock as would justify a reasonable man, or a man in the exercise of reasonable judgment, in making the selection; in other words, that it was not the judgment of the prospector that was to determine it, that it was the judgment of some other person than the man who was going to expend his labor and his money upon it.

For years that matter was contested in the courts. Recorded in the decisions not only of State supreme courts, but of the courts of the United States, you will find many decisions with varying conclusions, but in the case of *Harrington v. Chambers* the Supreme Court of the United States said that it was a matter which must rest entirely upon the judgment of the lo-



erator; that Congress had based the right upon conditions sufficiently onerous to insure against men locating mining claims and doing the necessary work required by the statute except where they offered some promise of becoming mines.

PROSPECTOR HAS MORE AT STAKE THAN ANYBODY ELSE.

No expert, so far as I know, has ever discovered a paying mine or a prospect that became a paying mine in the history of the United States. No great mine, no prospect that has developed into a great mine, has ever met with the approval of the experts who examined it. I speak not only from the record conceded to represent the facts and the experience, but I speak from a personal observation of nearly thirty years. I saw the great mines of Leadville condemned out of hand by the experts from Nevada and California. I saw them afterwards, notwithstanding the blight of the disapproval of those gentlemen, produce hundreds and hundreds of millions of dollars. I saw the mines of Idaho, in the great Coeur d'Alene country, condemned by the experts of Leadville and other parts of Colorado and California and Montana, and I have lived in their midst while they have produced more than \$400,000,000 in values. And yet we are confronted with the proposition that before the prospector, who has more at stake than anybody else, shall have a patent his claim shall be examined by a so-called expert. The prospector has at stake his labor and what little capital he has, generally consisting of the pack on his back. He is solicitous to find something that will make him money and relieve him against his poverty. Is it likely that he will trifle away his time upon something which in his judgment, at least, does not justify him in locating and developing?

Congress passed in a few sections of a statute a law that was complete in itself, which provided every detail necessary for the exercise of the right of the prospector and miner. The courts construed the law both as to the location, the development, and the necessary steps to be taken to obtain a patent to the claim. The Department in its industry and within the spirit of this order have formulated regulations, accumulating every day, which have resulted in embarrassing the prospector, in embarrassing and adding to the expense of the man who seeks to obtain the title of the United States to a mining claim until to-day the courts are mostly engaged in determining how much of the law is statutory law and how much of it is regulations and rules of the Department.

Now, this order proposes to send, to examine on the ground—it says "on the ground"—an expert wherever application is made for a patent. Just realize for a moment what that means. The mines lie up in the mountains, oftentimes where the snow covers the ground for six months in the year, where it is found necessary in the fall to equip the mines for a siege against the weather of six or seven months; where men go in in the fall and are not seen again in the haunts of civilization until spring, when the snows are off. During those periods the owners take advantage of the lull in the outside labor connected with the mines to patent their claims.

The law requires that before an application for a patent is filed you must first apply to the United States surveyor-general of the State for an order directed to some mineral surveyor of the United States, authorizing him to make a survey of that plane. That is generally done during the months of the year when the snow is off. It takes some time to perform that part of the work. Then those notes go to the surveyor-general's office, accompanied by plats, made by the deputy mineral surveyor, in triplicate. It requires some time to work up the field notes and make the plat. In the surveyor-general's office they receive attention according to the rush of business in that office, and generally by the time the summer weather is past, the winter approaching, the party finds himself ready to make his application for a patent.

Then, if he has secured the approval of the surveyor-general to his plat and field notes, he files those, together with an abstract of his title, affidavits that the applicants and locators are citizens of the United States, proof that \$500 has been expended in labor and improvements upon the claim, and not only that it has been expended, but how it has been expended. This proof must be certified by the United States deputy mineral surveyor who has surveyed the claim. He gives the length of the tunnel or the depth of the shaft, character of the ledge, and discovery, or whatever the work may consist of, which is described not in general terms, but specifically. This goes in with the application for a patent, and every one of those facts and statements is sworn to.

Then the register of the United States land office where the application is filed advertises in the paper designated, which must be the paper published nearest the claim, a copy of the application for a patent, which gives every detail as to the location and the compliance and the ownership of the claim, so

that the world is fully advised. In addition to that, an official copy of the application for patent is posted upon the claim in a conspicuous place, ordinarily at the point where the work is being conducted. In addition to that, an official copy of the application is posted in the United States land office, in that room where everybody goes to see who is applying for lands of the United States.

That would seem to be an adequate protection against any surreptitious obtaining of title to the lands of the United States. The plat made by the United States deputy mineral surveyor shows upon its face not only a statement of what the work consists of, but a picture of it, drawn upon the plat. It is on the plat posted on the claim. It is on the plat posted in the land office. It is on the plat filed with the application for a patent. Now, where is the opportunity for fraud?

COST OF DEVELOPING A MINING CLAIM.

It is then up to the land officers to determine whether or not that showing constitutes a compliance with the law, such as authorizes the issuance of a patent by the United States Government to the applicant for the mining claim. He has expended on it not only \$500, but he must expend on it as much more as is represented by the years during which he must expend in labor and improvements not less than \$100 a year; and in a majority of the cases where applications for patent for mining claims are made the expenditure amounts to more than \$5,000, and often vastly more than that. And yet it is deemed necessary to advise the Congress that an Executive order has been issued prohibiting the completion of the title to these applicants who have performed every act and against whom no protest is filed until the claims can be examined on the ground by an expert. There is not an average of more than six months in the year when the expert, if he were ever so competent, could make an examination of the average claim because of its location and of the weather and of the conditions that surround it.

The average expert comes from where? From the Department in Washington. What test is to be applied to this expert to determine whether or not his judgment or his opinion should weigh more in determining the rights of the parties than these precautionary measures that come, not unofficially or in a careless manner, but through the most careful provision guarding against any possible fraud?

Yet we are told that here in the recorder's office in the city of Washington these claims that have passed even the scrutiny of the Department of the Interior and the General Land Office and the surveyor-general and the local land office are to be held up, and are now held up and suspended until Congress shall make the appropriation that has been asked to provide these experts to examine them. How many would it take? How many experts, think you, would it take to examine the mining claims that are suspended? There were 1,582 suspended mining claims on the 1st day of this month. They accumulate probably at the rate of at least half that many per month. How many experts would it take to go upon the ground and examine those 1,582 claims, and how long would it take to examine them in the snows of winter in the mountains, because mines are nine times out of ten back in the rugged mountains? How soon could these experts be put to work were we to-morrow to make the appropriation necessary for their employment? How soon could they be put into the field to do this work, and how long would it take them to do it?

I say, after having given the matter some consideration, that were Congress to-morrow to provide for the appointment of these experts and the fund to pay them, before the necessary number of experts could be placed in the field a full year would elapse. There would not be a report on a single mine in the United States under twelve months if we were to do it to-morrow; and we will not do it at all, as a matter of fact.

But in the meantime this order is being enforced. The resolution of the Senator from Montana, to which resolution my remarks are addressed, is directed against that order; and we are here to criticize that order, to inquire as to the wisdom of the making of that order. That is our purpose. Does Congress have any higher function to perform during this session than that of protecting these citizens of the United States in the rights that we have undertaken to bestow upon them? Can Congress, with due respect to its own prerogative and its own dignity and its constitutional obligation, stand by and see the law that it has enacted stayed by the hand of an Executive who, under the Constitution, is bound to execute the will of Congress, whose highest duty it is to execute the will of the people as represented by our enactments? It seems to me that the subject is one which should thoroughly appeal to the interest and attention of every Member of this body and of Congress.

Just a word now as to the provision that was supposed to re-